

Small Tracts Act, WEMO, the San Bernardino County General Plan, Vision, Goals & Policies, and the OHV Ordinance

A. Small Tracts Act Background

Small Tract Act - STA (1938 to 1976) authorized the sale or lease for fair market value to any person or organization a tract not exceeding 5 acres of any vacant, unreserved public lands for residence, recreation, or community site purposes. After 1943 rights-of-way (ROW) easements of 33 feet (later amended to 50 feet) were added to provide a corridor for access and utilities to small tracts.

- Popularity of Small Tracts (From: Ed Ainsworth. Five Acres of Heaven.)

By the start of 1955, the Five Acre Tract movement was established so firmly that about 25,000 permits had been issued, 1,200 others were being processed by Mr. Witmer's Bureau of Land Management in Los Angeles, and some 12,000 others were starting along the procedural route to Federal Offices.

Many thousands of homes had been built, much more than \$1,000,000 of assessed valuation added to the tax rolls of San Bernardino and Riverside counties, and many more homes were being started all the time.

B. Small Tracts Act Rights-of-Way

It was generally accepted that small tract ROW were common law dedications to the public to provide ingress and egress to the leases or patented land and as access for utility service. The dedication was completed (accepted) with the use of the easement for a road or a public utility to serve a small tract.

After the termination of the Small Tracts Act classification in 1976 additional ROWs could be added within the borders of the existing ROW that serve the small tract patents without additional authorization from the United States.

C. Rights-of-Way Management (Penfold. DOI Instruction Memorandum No. 90-196)

1. The only intended governmental purpose of the ROW is to provide for utilization of the public land. The government has no intent to reserve rights to collect revenue, therefore, the ROW authorized under the STA are rental free.
2. Utilities that cross public land outside the small tract borders (regardless if they serve the small tract) or that do not serve the small tract, require separate authorization.
3. When a patent is issued the fee title lies with the owner of the land subject to the easement for use by the public. The Secretary no longer has rights to the land except those specifically reserved to the United States (i.e. oil, gas, minerals or prospecting for same, or interfere with water for grazing, or impair protection of watersheds). This restriction can only be eliminated through the process of eminent domain proceedings for some governmental purpose.
4. Rights-of-way connected to classified but not patented small tracts can be used for the construction of roads to serve owned small tracts without the necessity of a formal grant from the United States.
5. Once ROWs become dedicated public easements through use by the public, the dedication may be abandoned only by proper authority pursuant to due course of law. In most cases the proper authority is the county or city.

Sources for A, B, and C above:

Memo: February 12, 1991

From: Michael J. Penfold Assistant, DOI Director for Land and Renewable Resources DOI Instruction
Memorandum No. 90-196

Ed Ainsworth. Five Acres of Heaven. 1955. Page 29/30

D. San Bernardino County and Rights-Of-Way in U.S. Land Patents

Memo: March 13, 1991

From: Charles S. Scolastico Deputy County Council

To: Larry Cotton, San Bernardino County Surveyor

The analysis was in response to a request for an opinion on whether the County can accept rights-of-way reserved in U.S. land patents for public use or legal access.

*Based upon our research, it is our opinion that rights-of-way for public road and utility purposes reserved in land patents authorized under the Small Tract Act constitute local rights-of-way for those entitled to use them, i.e., the public and utility companies. **Moreover, since they are reservations rather than offers of dedications or something similar, there is no requirement of acceptance by the public or by a government agency.*** (PF's Bold)

E. San Bernardino County Ordinance 4103 -- Off-Highway Motor Vehicle Use

It appears that the County has jurisdiction over, but not necessarily responsibility for, the STA public road and utility easements based on their use by the public. Therefore, the County OHV Motor Vehicle Ordinance 4103 applies to not only the roads in County Service Areas but all county roads used by the public and utilities to access private property.

§28.0406

...no person shall operate an motor vehicle (including an off-highway motor vehicle), or the motor thereof, not shall any person organize conduct, or participate in staging (as defined herein), in a manner that disturbs the peace or quiet of an neighborhood or person for noise, dust, smoke, or fumes caused by such motor vehicles or staging activity.

F. County General Plan

The ordinance complies with the Vision of the County General Plan and the Goals and Policies for the following elements: Land Use, Circulation and Infrastructure, Conservation, Air Quality, Open Space, Noise, Safety, and Economic Development.

VISION

- ♣ Continued "rural" character in many areas of the County, with buffering as needed adjacent to more urban areas (see Goal LU-2).
- ♣ A sense of "place" and community identity in distinct communities where residents may choose to remain in unincorporated neighborhoods (see Goal LU-10).
- ♣ Clean air and a reliable clean water supply (see Goal CI-12).
- ♣ Growth and development consistent with the maintenance of environmental quality (see Goal LU-7)
- ♣ Conservation/preservation of the natural environment, which defines and enhances our quality of life (see Goal CO-1).