


BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

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**MEETING OF THE LAND SURVEYING TECHNICAL ADVISORY COMMITTEE
OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS**

**Board for Professional Engineers, Land Surveyors, and Geologists
2535 Capitol Oaks Drive
Third Floor Conference Room
Sacramento, California, 95833
(916) 263-2222**

Friday, April 22, 2011, 10:00 A.M.

LAND SURVEYING TECHNICAL ADVISORY COMMITTEE:

Members: Michael S. Butcher, PLS; Michael B. Emmons, PLS; Paul J. Enneking, PLS

Board Liaisons: Patrick J. Tami, PLS; Michael Trujillo

Staff Liaisons: Richard B. Moore, PLS; Celina Calderone

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LSTAC Meeting
April 22, 2011
Agenda (Cont.)

1. Roll Call

LSTAC Meeting
April 22, 2011
Agenda (Cont.)

2. Public Comment

3. Approval of LS TAC Minutes, April 22, 2010 (Possible Action)

LSTAC Meeting
April 22, 2011
Agenda (Cont.)

4. Discussion and Possible Recommendation Regarding Distribution of 3D Digital Terrain Models to Non-Licensed (Land Surveyor License) Individuals (Possible Action)

5. Discussion and Possible Recommendation Regarding the Definition of “Establish” as it relates to Business and Professions Code Section 8762 (Possible Action)

6. Discussion and Possible Recommendation Regarding Monumenting an Easement as it relates to Business and Professions Code Section 8762 (Possible Action)

March 18, 2011

Mr. Ric Moore, PLS
Land Surveyor Consultant
Board For Professional Engineers And Land Surveyors
2535 Capitol Oaks Drive, Suite 300
Sacramento, California, 95833-2944

Subject: Reconsideration of the Monumentation of an Easement and Record of Survey Filing Requirements Memorandum Dated January 16th, 1998 by Mr. Gary Duke, Staff Counsel (Exhibit 1).

Mr. Moore:

The above mentioned Memorandum asked and answered the following questions:

Question:

Does the monumentation of an easement require the filing of a Record of Survey?

Conclusion:

The monumentation of an easement does not require the filing of a Record of Survey.

We are in agreement with Mr. Duke's assessment of the code up to the last paragraph on page 3, which states:

Although monumenting of an easement clearly falls within the restricted practice of land surveying, such monumentation does not trigger the mandatory Record of Survey filing requirements of the Business and Professions Code section 8762. Although an easement is an interest in real property, the mandatory Record of Survey filing requirements are only applicable to a "survey relating to land boundaries or property lines." It is noteworthy that the term "easement" is not specifically referenced in Section 8762. This contrasts with the inclusion of the term in the list of activities identified in subdivision (c) of Section 8726 for purposes of defining land surveying. The subsection employs the terms "property line or boundary" as well as "easement" and "right of way". Consequently, if the Legislature intended to include the monumentation of an easement in the mandatory filing requirements of 8762, it would have employed that term as it did in defining the practice of land surveying in 8726. Consequently, the monumentation of an easement does not likely fall within the meaning of either "land boundaries or property lines" as those terms are used in [the] Business and Professions Code section 8762.

Reconsideration of the Monumentation of an Easement and Record of Survey Filing Requirements Memorandum Dated January 16th, 1998 by Mr. Gary Duke, Staff Counsel (Exhibit 1).

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As stated, Section 8762 (b) makes specific reference to "land boundaries or property lines". The terms, as applied, represent the fact that boundaries and property lines are synonymous. Neither term is exclusive to the fee ownership of real property. If the Legislature had intended to limit the Record of Survey to fee ownership it would have employed the term "fee" ownership within the statute and would have determined the need to differentiate between a boundary and a property line.

Referring to mandatory Record of Survey filing requirements under Section 8762 (b) (5), it reads "...any parcel described in any deed or other instrument of title recorded...". An easement is an "instrument of title recorded" and is often included as a parcel of a deed. Again, if the Legislature had intended this to be exclusive to fee owned property lines the referenced section would not have included "instrument of title recorded".

Referring to Section 8765, Record of Survey Not Required, subsection (d) states a Record of Survey is not required when a survey "is a retracement of lines shown on a subdivision map, official map or a record of survey, where no material discrepancy with those records are found...". If the Legislature had intended to exclude easements, it could have done so by stating "is a retracement of [fee] lines shown on a subdivision map...".

As a public welfare issue, an easement being the right to a use, or uses, over the property of another, thus burdening the fee owner, is likely to generate more contention between tenements than fee ownership lines. When a surveyor is asked to locate the boundary limits of an easement it would be for the use and/or construction of improvements, either within the easement, or adjacent to the easement. Improvements located by a subsequent surveyor and found to be outside of the written easement could result in complex and expensive litigation for a conforming easement. In the event the original surveyor had filed a Record of Survey documenting evidence (which may no longer be available) and the subsequent establishment of the easement differs in location (i.e. materially alternate positions of lines or points, material evidence or physical change or material discrepancy with the information contained in any subdivision map...) there would be traceable provenance and litigation based on land surveying differences, might be avoided.

A land surveyor is charged with determining land title boundaries, encroachments and encumbrances.¹ A land surveyor is responsible for uncovering an encroachment², easement³ or disputed boundary location, for uncovering unresolved conflicts between two surveys and for identifying ambiguous documents in chain of title for a particular property. Encroachments, the basis for many lawsuits, are not limited to fee ownership parcels, an encroachment may exist into an easement area. This is regularly evidenced by homeowners who allow trees to grow into a utility easement and are charged with removal costs. When a member of the public requests an easement to be delineated with markers or monuments, it is with a specific purpose in mind. These members of the public should be able to rely on these monuments in the construction of improvements or use of the land for several generations of ownership. In the event the field surveying establishment

¹ Encumbrances are defined by statute as "taxes, assessments, and all liens upon real property." California Civil Code § 1114. Any right to, or interest in, land which may subsist in another to diminution of its value, but consist with the passing of the fee by conveyance. *Black's Law Dictionary*, Second Edition (1990).

² Encroach. To enter by gradual steps or stealth into the possessions or rights of another; to trespass or intrude. To gain or intrude unlawfully upon the lands, property, or authority of another. *Black's Law Dictionary*, Second Edition (1990).

³ An easement is an interest in the land of another, which entitles the owner of the easement to a limited use or enjoyment of the other's land. Witkin, *6 Summary of California Law, Real Property* (9th ed. 1987) § 434, pg. 614 (citing Rest., Property § 450).

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records are not filed publicly, the owners are dependant upon maintenance and hand delivery of such records, which is contrary to our existing filing laws that have been in place since 1891.

In conclusion, we ask that the Board for Professional Engineers and Land Surveyors request the staff counsel to review and rescind the opinion issued January 16th, 1998. We respectfully ask the Board to reissue a new opinion restating that a Record of Survey is required when establishing and/or monumenting an easement.

There are surveyors who have relied on the previously issued opinion and the Board should consider issuing clemency from prosecution for establishment and monumentation of easements between January 16th, 1998 and the date of the reissue.

STATE OF CALIFORNIA

Memorandum

JAN 21 9 15 24 83

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

Date: January 16, 1998

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

From: Department of Consumer Affairs
Legal Office

Subject: Monumentation of an Easement and Record of Survey Filing Requirements

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 has prevented a more prompt response. Specifically, you posed the following question:

Question

Does the monumentation of an easement require the filing of a Record of Survey?

Conclusion

The monumentation of an easement does not require the filing of a Record of Survey.

Analysis

The Professional Land Surveyors' Act regulates the practice of land surveying in this state by restricting the practice of land surveying to those persons qualified and licensed to engaged in that profession. (Bus. & Prof. Code § 8725.)

The practice of land surveying is defined at Business and Professions Code section 8726 as follows:

"A person, including any person employed by the state or by a city, county, or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following:

(a) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil

engineering, as described in Section 6731.

(b) Determines the configuration or contour of the earth's surface, or the position of fixed objects thereon or related thereto, by means of measuring lines and angles, and applying the principles of mathematics or photogrammetry.

(c) Locates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries.[Emphasis added.]

(d) Makes any survey for the subdivision or resubdivision of any tract of land. For the purposes of this subdivision, the term "subdivision" or "resubdivision" shall be defined to include, but not be limited to, the definition in the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) or the Subdivided Lands Law (Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of this code).

(e) By the use of the principles of land surveying determines the position for any monument or reference point which marks a property line, boundary, or corner, or sets, resets, or replaces any monument or reference point. [Emphasis added.]

(f) Geodetic or cadastral surveying. As used in this chapter, geodetic surveying means performing surveys, in which account is taken of the figure and size of the earth to determine or predetermine the horizontal or vertical positions of points, monuments, or stations for use in the practice of land surveying or for stating the position of geodetic control points, monuments, or stations by California Coordinate System coordinates.

(g) Determines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in subdivisions (a), (b), (c), (d), (e), and (f).

(h) Indicates, in any capacity or in any manner, by the use of the title "land surveyor" or by any other title or by any other representation that he or she practices or offers to practice land surveying in any of its branches.

(i) Procures or offers to procure land surveying work for himself, herself, or others.

(j) Manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced.

(k) Coordinates the work of professional, technical, or special consultants in connection with the activities authorized by this chapter.

(l) Determines the information shown or to be shown within the description of any deed, trust deed, or other title document prepared for the purpose of describing the limit of real property in connection with any one or more of the functions described in subdivisions (a) to (f), inclusive.

(m) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a), (b), (c), (d), (e), (f),

(k), and (l).

Any department or agency of the state or any city, county, or city and county which has an unregistered person in responsible charge of land surveying work on January 1, 1986, shall be exempt from the requirement that the person be licensed as a land surveyor until the person currently in responsible charge is replaced.

The review, approval, or examination by a governmental entity of documents prepared or performed pursuant to this section shall be done by, or under the direct supervision of, a person authorized to practice land surveying."

The extent to which a person is engaged in any of the activities delineated in Business and Professions Code section 8726 determines whether or not they are required to hold a professional land surveyor license. In the present circumstance, subdivisions (c) and (e) of Section 8726, appear to be applicable. In relevant part, an "easement" is defined to be an interest in land permitting "a right of use over the property of an other" according to Black's Law Dictionary (1979).

The monumenting of an easement involves the practice of land surveying to the extent that a person "[l]ocates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries." (Bus. & Prof. Code § 8726(c).) Or, in the alternative, the monumenting of an easement constitutes the practice of land surveying to the extent that the setting of permanent markers or monuments for an easement involves the "use of the principles of land surveying" in determining the position for any "monument or reference point which marks a property line, boundary, or corner, or sets, resets, or replaces any monument or reference point. (Bus. & Prof. Code 8726(e).)

Although the monumenting of an easement clearly falls within the restricted practice of land surveying, such monumentation does not trigger the mandatory Record of Survey filing requirements of Business and Professions Code section 8762. Although an easement is an interest in real property, the mandatory Record of Survey filing requirements are only applicable to a "survey relating to land boundaries or property lines." It is noteworthy that the term "easement" is not specifically referenced in Section 8762. This contrasts with the inclusion of that term in the list of activities identified in subdivision (c) of Section 8726 for purposes of defining land surveying. That subsection employs the terms "property line or boundary" as well as "easement" and "right-of-way." Consequently, if the Legislature intended to include the monumentation of an easement in the mandatory filing requirements of 8762, it would have

HOWARD BRUNNER

January 16, 1998

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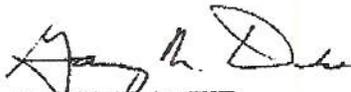
employed that term as it did in defining the practice of land surveying, in 8726. Consequently, the monumentation of an easement does not likely fall within the meaning of either "land boundaries or property lines" as those terms are used in Business and Professions Code section 8762.

I trust this is responsive to your request.

DERRY L. KNIGHT

Deputy Director

Legal Affairs



By GARY W. DUKE
Staff Counsel

7. Discussion and Possible Recommendation Regarding Regarding Removal of Monuments as it relates to Business and Professions Code Sections 8725 and 8764 (Possible Action)

ATTACHMENT B - ITEM 7

August 6, 2010

Executive Officer David E. Brown
California Board for Professional Engineers and Land Surveyors
2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833-2944

Subject: California Professional Land Surveyors Act -
Regarding the Removal of Monuments

Dear Mr. Brown:

An issue has recently surfaced in our community and I am requesting any previous correspondence, letters of determination or current opinions with regard to the subject matter. As the permissible act of removing monuments is cited a number of times in the Land Surveyors Act (i.e. Sections 8725, 8764, etc.), as the County Surveyor, I am trying to ask the following questions in as non-bias a manner as possible:

- 1) Under what circumstances is a land surveyor allowed to remove monumentation, whether his own or that of our others?
- 2) Conversely, under what circumstances should a land surveyor not remove monumentation, whether his own or that of others?

LSTAC Meeting
April 22, 2011
Agenda (Cont.)

8. Discussion and Possible Recommendation Regarding Proposed Legislation (if necessary)
(Possible Action)

LSTAC Meeting
April 22, 2011
Agenda (Cont.)

9. Closed Session – Examination Procedures and Results, Review of Applications and Investigations, and Administrative Adjudication (As Needed) [Pursuant to Government Code sections 11126(c)(1), 11126(c)(2), and 11126(c)(3)] (Possible Action)

10. Open Session to Announce the Results of Closed Session

11. Date of Next TAC Meeting

12. Other Business Not Requiring Committee Action

13. Adjourn