

**BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS**

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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, March 16, 2012, 1:00 P.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:** Raymond L. Mathe, PLS; Celina Calderone

1. Roll Call
2. Public Comment
3. Approval of LS TAC Minutes, April 22, 2011 (Possible Action)
4. Discussion and Possible Recommendation Regarding the Definition of "Establish" as it relates to Business and Professions Code Section 8762 (Possible Action)
5. Discussion and Possible Recommendation Regarding Monumenting an Easement as it relates to Business and Professions Code Section 8762 (Possible Action)
6. Discussion and Possible Recommendation as it relates to Business and Professions Code Section 8741(a) (Possible Action)
7. Discussion and Possible Recommendation as it relates to Business and Professions Code Sections 8742(b), 8773(a), and 8773(b) (Possible Action)
8. Discussion and Possible Recommendation as it relates to Subdivision Map Act Sections 66442 and 66450 (Possible Action)
9. Review of Board Rule 425 for Possible Revision (Possible Action)
10. Review selected Board actions from March 8-9, 2012 Board Meeting (If necessary)
11. 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)] (If necessary)
12. Open Session to Announce the Results of Closed Session (If necessary)
13. Date of Next TAC Meeting – July 20, 2012
14. Other Business Not Requiring Committee Action
15. Adjourn

LSTAC Meeting
March 16, 2012
Agenda (Cont.)

1. Roll Call

3. Approval of LS TAC Minutes, April 22, 2011 (Possible Action)

Moved: _____ Second: _____

Comments: _____

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**MINUTES
DRAFT****LAND SURVEYING TECHNICAL ADVISORY COMMITTEE MEETING
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
2535 CAPITOL OAKS DRIVE, SUITE 300
SACRAMENTO, CA 95833****THURSDAY, APRIL 22, 2011
10:00 A.M.****TAC Members Present:** Mike Butcher, Chair; Mike Emmons, Co-Chair; Paul Enneking**Board Members Present:** Patrick Tami**Board Staff Present:** Ric Moore, Nancy Eissler**Legal Council:** Gary Duke arrived at 10:10**Members of the Public:** Roger Hanlin (CLSA), Dave Woolley, Steve Hau (CalTrans)

1. **Roll call to establish a quorum**
A quorum was established, the meeting was called to order at 10:10 a.m.

2. **Public Comment**
None

3. **Approval of LS TAC Minutes**

MOTION: Mr. Emmons/Mr. Enneking motion to approve the minutes with a correction to Item 6, Jim Harrick should be Jim Herrick.

VOTE: 3-0, Minutes approved.

Mr. Butcher would like to add a discussion on 8771(b) for the next agenda.

4. **Discussion and Possible Recommendation Regarding Distribution of 3-D Digital Terrain Models to Non-Licensed land Surveyor License individuals**

Mr. Moore only received a comment from one of the public attendees from the last meeting and they were very minor and supported the draft document that the LS TAC was already looking at. CSLB are willing to do a joint outreach with the contractors. Mr. Moore also indicated that they have not received any new or additional complaints so the Board doesn't really have anything to act on at this point.

He also added that there were a few enforcement cases a couple of years ago but that he believed they were all dismissed.

Ms. Eissler indicated that the ones that they actually looked into it, they were not violations and that they have not received any inquiries in the last few years.

Mr. Butcher asked if the inquiries had anything to do with the economy, the fact that people may not be moving dirt. Ms. Eissler stated it was possible and Mr. Moore agreed. He said that they had a few that bordered on the very general use of scanning equipment, so it is not necessarily machine guidance but its unlicensed practice using technology. Most of those are people trying to offer the equipment but nothing to do with machine guidance. There is a lot of talk out there amongst the surveyors but there have not been any official complaints.

Mr. Tami indicated that he thought the discussion is on the distribution of 3-D DTMs rather than just specific to machine guidance. Mr. Moore concurred.

Mr. Moore continued that it seems to be a result of a letter or inquiry that went out with a Board opinion that discussed that if you knowingly gave information to an individual that was not licensed and they were going to be using it in a manner that was regulated by practice of a license, then you could be found to be aiding and abetting. Just providing information did not seem to be a violation.

Mr. Enneking commented that if we deliver a topo to an architect they can do whatever they want with it. They are not responsible for practicing land surveying and we cannot control or be responsible for whether they even know how to interpret our work. Conceptually this is not very different; maybe it's a little more direct or dramatic because they are moving dirt.

Mr. Moore commented that he knows there is an industry trend for contractors to be utilizing survey equipment, or equipment normally associated with surveying, which is not a violation, and practicing what we would consider in California as construction staking or grading which could be overlapping engineering or surveying aspects, that is the reality of what is happening out there. Currently in California construction, staking is a protected practice under surveying and a little bit lesser role under engineering. Even though they are doing it, they shouldn't be, and it should be done under the responsible charge of a licensee authorized to do so.

Mr. Butcher commented that if construction stakes out and someone comes out with laser or used some sort of mathematics, which we would consider grade checking, they are not practicing land surveying, but now that they can do it with a GPS or digitally. If the land surveyor or the civil engineer is actually creating the digital terrain model are they aiding and

abetting by giving this to those individuals, because they know that really the only use out of it is to either calculate quantities or go out and run machine guidance with it.

Mr. Moore stated that is a case by case basis because you don't really know how they are going to use it. One thing to consider is just by utilizing the model by an unlicensed person, or anyone using the model and equipment is that replacing construction staking or are they actually going out and using it to do their own construction staking. If the equipment is using hardware and software to go along and grade without stakes is that replacing construction staking? Does that mean now they are in violation or are they going out and running GPS/total station equipment themselves as a contractor and setting their own stakes without having a licensee around. Those are two different subjects.

Mr. Enneking stated that just running 3-D model isn't practicing.

Mr. Tami indicated that since there are not any enforcement cases, maybe outreach with the Contractor's Board is a good idea, but doesn't think spending TAC time on it is warranted.

Mr. Butcher commented that he thinks that this is a gray area and prevalent.

Mr. Moore commented that it is possible for an engineer to provide a 3-D model of a finished design to a contractor and the contractor takes that and determines multiple different versions of surfaces, it would fall under 8726(m). In the past they also had the engineer plans, and they probably do have the engineer plans that are signed off, that should that finished design, with typical templates and standards as to how they would arrive at where that subgrade was anyhow. Is one different than the other?

Mr. Butcher asked different by just the use of different technology? Does it take the public to be impacted before it becomes a problem?

Mr. Moore commented that it could be. He believes that it is more of a professional association (CLSA/ACEC/ASCE) to see how far they want to push it. This is something that is impacting the industries, probably more than it is the Board.

Mr. Butcher asked if the Board would like any information from the LSTAC or just continue to monitor it. Mr. Moore stated that they should just continue to monitor it and if anything comes up or enforcement cases come in just to let the LSTAC know what going on. Mr. Moore further indicated that he did not receive any comments on the previous draft but if they wanted to make more comments that he could work with the Contractor's Board about putting out a joint publication in their newsletter or our newsletter.

Mr. Butcher indicated that he would like to see that happen. And they would provide comments.

Ms. Eissler commented that they have to look at these types of issues on a case by case basis and in this case did someone do something that constitutes the professional practice? The Board must be cautious that what can be viewed as a blanket statement is always the practice. The outreach needs to be able to give out general guidance for people and

encourage them to contact the Board with specifics on a project so that the Board can provide and answer on those specifics.

Mr. Butcher asked the LSTAC members to forward any comment to Mr. Moore.

MOTION: Mr. Butcher and Mr. Enneking recommend the Board to do a joint outreach with Contractor's Board.

VOTE: 3-0, Motion Carried

5. **Discussion and Possible Recommendation Regarding the Definition of "Establish" as it relates to Business and Professions Code Section 8762**

Mr. Moore referenced a memo that was done by Mr. Gary Duke on August 30, 1999. Mr. Duke refers to newly established as it relates to 8762 and corner records. Mr. Moore thought this would be helpful to the TAC to consider how they would like to proceed with moving forward with any kind of regulation or language toward defining "establish" or "establishment".

Ms. Eissler indicated that the Board is just going to define the word the Board can do that in regulation but if it is a matter of it needs to be a different word or more words then it would need to be done in statute.

Mr. Tami added that the Board is still seeing many enforcement cases where people don't think that they have established anything until they have set a monument.

Mr. Butcher thinks that additional words should be added

Mr. Tami suggests use words in 8726(c)

Mr. Butcher also suggests using language in 8762(b)(4) and (b)(5)

MOTION: Mr. Butcher and Mr. Enneking recommend clarifying 8762 by adding text from 8726(c): locates, relocates, establishes, reestablishes or retraces in front of 8762(b)(4).

VOTE: 3-0, Motion Carried

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

David Woolley representing JPPC disagrees with conclusion that easement does not require a record of survey. Easements are litigated more than boundaries and need to be part of public record. He would like the Board to rescind opinion that does not require a record of survey.

Mr. Butcher asked if an easement a deed or other instrument of title recorded as stated in (b)(5); Mr. Moore added if it would have been appropriate for it to say "or other instrument of fee title"? Mr. Butcher indicated that he has seen them written as a deed. Mr. Enneking stated that there are easements that are granted in a grant deed. However, Mr.

Butcher indicated that an easement does not grant title. Mr. Tami asked if monumenting of an easement requires a record of survey. Mr. Enneking responded yes however there could be some situations where it could be considered overkill. If monument is set, then a record of survey must be filed.

Mr. Moore stated that the JPPC is requesting the Board to rescind and reissue a new opinion restating that a record of survey is required when establishing and/or monumenting an easement. They have their argument as to when it is required but it does not mean that the TAC has to come to an agreement that it is always required. Mr. Butcher indicated that if a monument is set that affects someone's property rights, you are required to tag and file it. There may be situations where it is pertinent to require and others where it is not and that may be something that the TAC should look into.

Mr. Moore suggests that each TAC member work up their own comments and research and provide them at the next meeting.

7. **Discussion and Possible Recommendation Regarding Removal of Monuments as it relates to Business and Professions Code Section 8725 and 8764**

Mr. Moore indicated that the Board received a letter asking for an opinion and thought it would be a good topic to bring to the TAC. Mr. Emmons started off by saying that there is nothing in the LS Act regarding when or why, only that they can. 8764(a) references removal. Mr. Butcher asked if a property owner can remove a monument. Mr. Moore said that assuming that the monument is set at the true corner. Mr. Tami asked if a land surveyor can maliciously, deliberately, remove a monument. Mr. Enneking said that the ACT just generally states removal as part of practice, maybe a standard of care. Ms. Eissler stated that this particular issue comes up in enforcement matters where a complaint that a surveyor has set a monument and not filed a record map. When the surveyor is contacted by the Board to point out that their monument is out there and needs to be filed, their response is that they will just remove it. Obviously someone has found it and perhaps using it and then it becomes an issue of should that monument be removed or is it now becoming part of the public record that the public is now relying on because it is out there and others have seen it and know about it. In another situation where surveyor A will go out and conduct a field survey and find surveyor B's monument and believe without malicious intent that surveyor B's monument is in the wrong place and removes it and places his where he believes it should be. Mr. Emmons would like to believe that before you remove someone else's monument that you contact that individual and also that you would have to file a record of survey indicating when it was set or removed. Mr. Moore said that there are times when you know a monument is going to be destroyed and you are going to tie it out because a trench is going to be dug or a road being paved then it is acceptable to remove a monument. According to 8725, if you remove a monument, you must be licensed. Ms. Eissler added that it is an issue of standard of practice and she believes

that people in the industry want it to be more black and white. Mr. Tami indicated that really there are no limitations by statute, there may be civil liability or Board rules that could affect the intent and it would be a professional practice decision. Mr. Butcher said that it does raise the question that it does not say that a record of survey must be filed if a monument is pulled.

Mr. Moore pointed out that in a case if a monument is found with someone else's tag that has been disturbed and you can't reset it, you can remove theirs and set yours to perpetuate the location as to rehabilitate it. Ms. Eissler indicated this may be an issued where the Board cannot provide a specific response because there are too many variables as to when it may or may not be acceptable. It would have to be determined on a case-by-case basis.

Mr. Moore concluded that it seems to be a standard of practice issue and could say that it is not specific in law.

8. **Discussion and Possible Action Recommendation Regarding Proposed Legislation**

Mr. Butcher suggested AB1023 Maintenance of the Codes Bill, Ms. Eissler indicated that the Board did vote to oppose unless amended because it removes from the Engineer's Act the provision that allows civil engineers to do engineering surveying and to offer land surveying services in connection with the civil engineering, and in the Land Surveyors Act it removes the provision that would allow land surveyors to offer civil engineering in connection with their land survey. The Board has taken an oppose unless amended to remove all those sections because the Board believes they are necessary to the law and this is only supposed to be making non substantive changes to sections that are necessary. Typically with these types of bills, they will not make amendments until it goes through the first house and since this is an assembly bill, once it clears the assembly floor and before it goes to the Senate committees is typically when the amendments would be made and then it would have to go back to the assembly again.

9. **Closed Session**

No action necessary

10. **Open Session to Announce the Results of Closed Session**

No action necessary

11. **Date of Next TAC Meeting**

Tentatively scheduled for July 15 or July 22, 2011 and then another future meeting for October 7, 2011.

12. **Other Business Not Requiring Committee Action**

Mr. Moore indicated that reappointments would take place at the May Board meeting.

Mr. Tami thanked the TAC members for their service.

Mr. Enneking confirmed that the TAC can have up to five members. Mr. Moore added that when recruiting TAC members, consideration is given to the various demographics such as Government and private employees, northern, central, and southern applicants. He asked for recommendations for the TAC that covers the demographics that the Board needs to contact Mr. Pat Tami for recruitment.

Mr. Moore went on to say the Board is proposing changes to fee regulations. By statute the Board is allowed to have outside organizations to collect fees. As NCEES starts administering the National examinations instead of our Board, and as they go toward computer based testing, applicants will be able to pay directly to the vendors. Currently, when applicants pay their \$275.00 fee to the Board, it involves the application, evaluation, and examination costs NCEES bills the Board and in turn, the Board pays NCEES. One of the items the Board is considering is to have applicants pay NCEES directly for the National examination fees. To accomplish this, there is one fee in our regulations, so the Board is breaking it down as an application fee, state examination fee, and a renewal fee. He added that it is being suggested that renewal fees be slightly less than it is currently because licensee's renewal fees have assisted in subsidizing the examination costs.

A policy was recently issued by the Department regarding who could work as expert consultants in developing examinations. It stated that Board members and committee members could not. Ms. Eissler indicated that it was not clear whether it was referring to advisory committees that a board can create or there are some statutory committees that are similar to a board only that they are referred to as a committee instead of a board.

Mr. Woolley mentioned that one of the items that is being talked about is the criteria for the selection of technical experts for enforcement. There is a guide available now that outlines the qualifications of those experts. He explained that when a complaint is issued it goes to the Board's Enforcement unit. If it is a technical land surveying issue that the staff cannot answer it then gets referred to another surveyor and a report is provided that indicates that this person was negligent. Ms. Eissler stated that these experts are referred to Independent Technical Experts. They review and provide opinions on enforcement investigation cases. The ultimate decision of the outcome of the case is, rests with the Board and the Board staff but the Board must use Independent Technical Experts to provide expert opinion when it is a technical practice related issue. They cannot be Board Staff or a TAC member. They are not the deciding factor in the outcome; they only provide a professional opinion.

The current minimum qualifications require that they must be currently licensed and have been licensed for at least five years, and not have had any complaints against them. In addition they must provide a resume and complete an Areas of Expertise form. They are then selected based on their areas of expertise and find someone that best fits the particular experience. They are then contacted and are asked if this is in their area of expertise.

13. **Adjourn**
Meeting adjourned at 2:43 P.M.

LSTAC Meeting
March 16, 2012
Agenda (Cont.)

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

Attachment A – Item 4

CLSA Legislative Proposal #3

BUSINESS AND PROFESSIONS CODE

SECTION 8762

Section 8762 of the Business and Professions Code is amended to read:

8762. (a) Except as provided in subdivision (b), after making a field survey in conformity with the practice of land surveying, the licensed surveyor or licensed civil engineer may file with the county surveyor in the county in which the field survey was made, a record of the survey.

(b) Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following:

(1) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or properly filed in the office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

(2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

(3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States.

(4) The **location, relocation, establishment, reestablishment or retracement** of one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.

(5) The points or lines set during the performance of a field survey of any parcel described in any deed or other instrument of title recorded in the county recorder's office are not shown on any subdivision map, official map, or record of survey.

(c) The record of survey required to be filed pursuant to this section shall be filed within 90 days after the setting of boundary monuments during the performance of a field survey or within 90 days after completion of a field survey, whichever occurs first.

(d) (1) If the 90-day time limit contained in subdivision (c) cannot be complied with for reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day time period shall be extended until the time at which the reasons for delay are eliminated. If the licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter stating that he or she is unable to comply. The letter shall provide an estimate of the date for completion of the record of survey, the reasons for the delay, and a general statement as to the location of the survey, including the assessor's parcel number or numbers.

(2) The licensed land surveyor or licensed civil engineer shall not initially be required to provide specific details of the survey. However, if other surveys at the same location are performed by others which may affect or be affected by the survey, the licensed land surveyor or licensed civil engineer shall then provide information requested by the county surveyor without unreasonable delay.

(e) Any record of survey filed with the county surveyor shall, after being examined by him or her, be filed with the county recorder.

(f) If the preparer of the record of survey provides a postage-paid, self-addressed envelope or postcard with the filing of the record of survey, the county recorder shall return the postage-paid, self-addressed envelope or postcard to the preparer of the record of survey with the filing data within 10 days of final filing. For the purposes of this subdivision, "filing data" includes the date, the book or volume, and the page at which the record of survey is filed with the county recorder.

LSTAC Meeting
March 16, 2012
Agenda (Cont.)

5. 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).

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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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 1998 152483

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

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January 16, 1998

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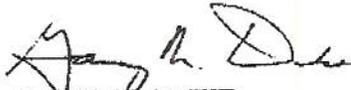
employed that term as it did in defining the practice of land surveying, in 8726. Consequently, the monumentation of an easement does not likely fall within the meaning of either "land boundaries or property lines" as those terms are used in Business and Professions Code section 8762.

I trust this is responsive to your request.

DERRY L. KNIGHT

Deputy Director

Legal Affairs



By GARY W. DUKE
Staff Counsel

LSTAC Meeting
March 16, 2012
Agenda (Cont.)

6. Discussion and Possible Recommendation as it relates to Business and Professions Code Section 8741(a) (Possible Action)

Attachment C – Item 6

CLSA Revised Legislative Proposal #1

BUSINESS AND PROFESSIONS CODE
SECTIONS 8741

Section 8741 of the Business and Professions Code is amended to read:

8741. (a) The first division of the examination shall test the applicant's fundamental knowledge of surveying, mathematics, and basic science. The board may prescribe by regulation reasonable educational or experience requirements including two years of postsecondary education in land surveying, two years of experience in land surveying, or a combination of postsecondary education and experience in land surveying totaling two years for admission to the first division of the examination. ~~Applicants who have passed the engineer-in-training examination, or who hold professional engineer registration, are exempt from this division of the examination.~~ Applicants who are licensed by the board as a California civil engineer as required in Section 6755.1, are exempt from this division of the examination.

The second division of the examination shall test the applicant's ability to apply his or her knowledge and experience and to assume responsible charge in the professional practice of land surveying.

(b) The applicant for the second division examination shall have successfully passed the first division examination, or shall be exempt therefrom. The applicant shall be thoroughly familiar with (1) the procedure and rules governing the survey of public lands as set forth in "Manual of Surveying Instructions," published by the Bureau of Land Management, Department of the Interior, Washington, D.C. and (2) the principles of real property relating to boundaries and conveyancing.

(c) The board may by rule provide for a waiver of the first division of the examination for applicants whose education and experience qualifications substantially exceed the requirements of Section 8742.

(d) The board may by rule provide for a waiver of the second division of the examination and the assignment to a special examination for those applicants whose educational qualifications are equal to, and whose experience qualifications substantially exceed, those qualifications established under subdivision (c). The special examination may be either written or oral, or a combination of both.

LSTAC Meeting
March 16, 2012
Agenda (Cont.)

7. Discussion and Possible Recommendation as it relates to Business and Professions Code Sections 8742(b), 8773(a), and 8773(b) (Possible Action)

Attachment D – Item 7

CLSA Legislative Proposal #2

BUSINESS AND PROFESSIONS CODE
SECTIONS 8741 and 8773

Section 8741 of the Business and Professions Code is amended to read:

8741. (a) The first division of the examination shall test the applicant's fundamental knowledge of surveying, mathematics, and basic science. The board may prescribe by regulation reasonable educational or experience requirements including two years of postsecondary education in land surveying, two years of experience in land surveying, or a combination of postsecondary education and experience in land surveying totaling two years for admission to the first division of the examination. Applicants who have passed the engineer-in-training examination, or who hold professional engineer registration, are exempt from this division of the examination.

The second division of the examination shall test the applicant's ability to apply his or her knowledge and experience and to assume responsible charge in the professional practice of land surveying.

(b) The applicant for the second division examination shall have successfully passed the first division examination, or shall be exempt therefrom. The applicant shall be thoroughly familiar with (1) the procedure and rules governing the survey of public lands as set forth in ~~Manual of Surveying Instructions," published by the Bureau of Land Management, Department of the Interior, Washington, D.C. Manual of Surveying Instructions (2009, published by the Federal Bureau of Land Management~~ and (2) the principles of real property relating to boundaries and conveyancing.

(c) The board may by rule provide for a waiver of the first division of the examination for applicants whose education and experience qualifications substantially exceed the requirements of Section 8742.

(d) The board may by rule provide for a waiver of the second division of the examination and the assignment to a special examination for those applicants whose educational qualifications are equal to, and whose experience qualifications substantially exceed, those qualifications established under subdivision (c). The special examination may be either written or oral, or a combination of both.

Section 8773 of the Business and Professions Code is amended to read:

8773. (a) Except as provided in subdivision (b) of Section 8773.4, a person authorized to practice land surveying in this state shall complete, sign, stamp with his or her seal, and file with the county surveyor or engineer of the county where the corners are situated, a written record of corner establishment or restoration to be known as a "corner record" for every corner established by the Survey of the

Public Lands of the United States, except "lost corners," as defined by the ~~Manual of Instructions for the Survey of the Public Lands of the United States,~~ Manual of the Survey and Instructions (2009), published by the Federal Bureau of Land Management and every accessory to such corner which is found, set, reset, or used as control in any survey by such authorized person.

(b) After the establishment of a lost corner, as defined by the ~~Manual of Instructions for the Survey of the Public Lands of the United States,~~ Manual of Surveying Instructions (2009), published by the Federal Bureau of Land Management a record of survey shall be filed as set forth in Section 8764.

(c) Any person authorized to practice land surveying in this state may file such corner record for any property corners, property controlling corners, reference monuments, or accessories to a property corner.

LSTAC Meeting
March 16, 2012
Agenda (Cont.)

8. Discussion and Possible Recommendation as it relates to Subdivision Map Act Sections 66442 and 66450 (Possible Action)

Attachment E – Item 8

CLSA Legislative Proposal #4

GOVERNMENT CODE

SECTIONS 66442 and 66450

Section 66442 of the Government Code is amended to read:

66442. (a) If a subdivision for which a final map is required lies within an unincorporated area, a certificate or statement by the county surveyor is required. If a subdivision lies within a city, a certificate or statement by the city engineer or city surveyor is required. The appropriate official shall sign, date, and, below or immediately adjacent to the signature, indicate his or her registration or license number ~~with expiration date~~ and the stamp of his or her seal, state that:

(1) He or she has examined the map.

(2) The subdivision as shown is substantially the same as it appeared on the tentative map, and any approved alterations thereof.

(3) All provisions of this chapter and of any local ordinances applicable at the time of approval of the tentative map have been complied with.

(4) He or she is satisfied that the map is technically correct.

(b) City or county engineers registered as civil engineers after January 1, 1982, shall only be qualified to certify the statements of paragraphs (1), (2), and (3) of subdivision (a). The statement specified in paragraph (4) shall only be certified by a person authorized to practice land surveying pursuant to the Professional Land Surveyors' Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) or a person registered as a civil engineer prior to January 1, 1982, pursuant to the Professional Engineers' Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code). The county surveyor, the city surveyor, or the city engineer, as the case may be, or other public official or employee qualified and authorized to perform the functions of one of those officials, shall complete and file with his or her legislative body his or her certificate or statement, as required by this section, within 20 days from the time the final map is submitted to him or her by the subdivider for approval.

(c) As used in this section, "certificate," "certify," and "certified" shall have the same meaning as provided in Sections 6735.5 and 8770.6 of the Business and Professions Code.

Section 66450 of the Government Code is amended to read:

66450. (a) If a subdivision for which a parcel map is required lies within an unincorporated area, a certificate or statement by the county surveyor is required. If a subdivision lies within a city, a certificate or statement by the city engineer or city surveyor is required. The appropriate official shall sign, date, and, below or

immediately adjacent to the signature, indicate his or her registration or license number ~~with expiration date~~ and the stamp of his or her seal and state that:

(1) He or she examined the map.

(2) The subdivision as shown is substantially the same as it appeared on the tentative map, if required, and any approved alterations thereof.

(3) All provisions of this chapter and of any local ordinances applicable at the time of approval of the tentative map, if required, have been complied with.

(4) He or she is satisfied that the map is technically correct.

(b) City or county engineers registered as civil engineers after January 1, 1982, shall only be qualified to certify the statements of paragraphs (1), (2), and (3) of subdivision (a). The statement specified in paragraph (4) of subdivision (a) shall only be certified by a person authorized to practice land surveying pursuant to the Professional Land Surveyors' Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) or a person registered as a civil engineer prior to January 1, 1982, pursuant to the Professional Engineers' Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

(c) The county surveyor, city engineer, or city surveyor, as the case may be, or other public official or employee qualified and authorized to perform the functions of one of those officials, shall complete his or her certificate or statement, as required by this section, within 20 days from the time the parcel map is submitted to him or her by the subdivider for approval. The completed parcel map shall be delivered to the county recorder or, if required by local ordinance, filed with the legislative body prior to delivery to the county recorder, within the same 20-day period.

LSTAC Meeting
March 16, 2012
Agenda (Cont.)

9. Review of Board Rule 425 for Possible Revision (Possible Action)

Attachment F – Item 9

425. Experience Requirements - Professional Land Surveyors.

(a) An applicant for licensure as a professional land surveyor shall be granted credit towards the experience requirements contained in Sections 8741 and 8742 of the Code, for the following education curriculum:

- (1) Four (4) years experience credit for graduation from an approved land surveying curriculum.
- (2) Two (2) years experience credit for graduation from a non-approved land surveying curriculum.
- (3) Five (5) years of experience credit for graduation from an approved cooperative work-study land surveying curriculum.
- (4) One-half (1/2) year of education credit for each year of study completed in an approved land surveying curriculum that did not result in the awarding of a baccalaureate degree, except that the maximum of such experience shall be two (2) years. A year of study shall be at least 32 semester units or 48 quarter units, no less than 10 semester units or 15 quarter units of which shall be from classes clearly identified as being land surveying subjects.

“Life Experience Degrees” are not acceptable and will not be counted towards the education credit.

(b) All qualifying work experience in land surveying shall be performed under the responsible charge of a person legally authorized to practice land surveying. An applicant shall possess at least two years of actual responsible training experience in land surveying which shall involve at least four of the land surveying activities specified in subdivisions (a) - (g) and (k) - (n) of Section 8726 of the Code. Qualifying experience in activities specified in subdivision (a), (b), (m), and (n) of Section 8726 shall not exceed one year. Qualifying experience shall be computed on an actual time worked basis, but not to exceed forty hours per week.

(c) For purposes of Section 8742 of the Code, the term “responsible field training” experience may include, but is not limited to, the land surveying activities listed below. Under the responsible charge, direction, and review of a person legally authorized to practice land surveying, the applicant:

- (1) Determines field survey methods and procedures, including selection of accuracy standards.
- (2) Selects or verifies that the correct control monumentation is used to establish the designated survey datum(s) (horizontal and vertical) and selects on-the-ground locations for control monuments.
- (3) Determines the relevance of monuments and physical field evidence for the purpose of establishing boundary and property lines.
- (4) Reviews measurement observations for the determination of accuracy, completeness, and consistency.
- (5) Reviews field notes and records for application of proper field survey procedures.
- (6) Plans, performs, and reviews field checks and, based on such checks, determines if completed field surveys are accurate and sufficient.
- (7) Searches for boundary and control monuments; assists in analyzing field evidence for locating boundary points and lines; identifies and describes such evidence; compares record data to found physical evidence; compares record data to measured data; documents discrepancies;

assists in acquiring and documenting testimony regarding boundary locations; recommends boundary location and/or establishment; selects or verifies that the correct controlling monuments are used to locate or establish boundary points and lines; and prepares draft record documents.

(8) Coordinates the fieldwork necessary to prepare maps, plats, reports, descriptions, or other documents.

(9) Recommends when existing boundary monuments are to be replaced, selects the method(s) to be used for replacing and resetting monuments, and prepares field documentation of such work, including that necessary for Parcel Maps, Final Maps, Record of Survey Maps, and Corner Records.

(10) Functions as a party chief, chief of parties, or lead person in charge of field crew(s) in the performance of field surveys.

(11) Plans and performs field observations using Global Positioning System technology and determines if completed field surveys are accurate and sufficient in geodetic and land surveying applications.

(12) Performs surveys to facilitate the location or construction of infrastructure and fixed works of improvement.

The enumeration of the above tasks does not preclude the Board from awarding “responsible field training” credit for training of a similar character in other current or future land surveying activities not specifically enumerated herein. It is also understood that the listed tasks are only some of those that may be considered as responsible training, and that this list is not in any way intended to enumerate all of the tasks which may be performed by licensed Professional Land Surveyors.

(d) For purposes of Section 8742 of the Code, the term “responsible office training” experience may include, but is not limited to, the land surveying activities listed below. Under the responsible charge, direction, and review of a person authorized to practice land surveying, the applicant:

(1) Performs the planning and analysis necessary for the preparation of survey documents, such as Parcel Maps, Final Maps, Record of Survey Maps, Corner Records, legal descriptions, topographic maps, plat maps, lot line adjustments, annexations, and boundary line agreements.

(2) Reduces and evaluates field data.

(3) Develops procedures and systems for the collection, reduction, adjustment, and use of land surveying data.

(4) Prepares data to be used by field surveyors or field crews.

(5) Coordinates the processing of maps, plats, reports, descriptions, or other documents with local agencies, other licensed surveyors, or County Surveyors Offices.

(6) Coordinates the office work necessary to prepare maps, plats, reports, descriptions, or other documents.

(7) Coordinates survey and design efforts for improvement plans as required for sufficiency to enable proper location of improvements in the field.

(8) Researches public and private records to obtain survey and title data.

(9) Performs boundary analysis and determination using record descriptions, survey, and title data.

(10) Plans and coordinates the application of Global Positioning System technology for geodetic and land surveying applications.

(11) Plans, coordinates, performs, and reviews the entry of property boundary related geo-referenced data into an electronic database.

(12) Prepares topographic mapping utilizing photogrammetric methods.

The enumeration of the above tasks does not preclude the Board from awarding “responsible office training” credit for training of a similar character in other current or future land surveying activities not specifically enumerated herein. It is also understood that the listed tasks are only some of those that may be considered as responsible training, and that this list is not in any way intended to enumerate all of the tasks which may be performed by licensed professional land surveyors.

(e) Computation of qualifying experience for a license as a professional land surveyor shall be to the date of filing of the application, or it shall be to the final filing date announced for the examination if the application is filed within a period of thirty (30) days preceding the final filing date announced for such examination.

(f) An applicant for licensure as a land surveyor who holds a valid and unexpired license as a civil engineer is exempt from the application requirements of subdivisions (b), (c), and (d) of this section provided he or she submits sufficient documentation that he or she has a minimum of two years of actual broad based progressive experience in land surveying as required by Business and Professions Code Section 8742(a)(3).

LSTAC Meeting
March 16, 2012
Agenda (Cont.)

10. Review selected Board actions from March 8-9, 2012 Board Meeting (If necessary)

LSTAC Meeting
March 16, 2012
Agenda (Cont.)

11. 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)] (If necessary)

12. Open Session to Announce the Results of Closed Session (If necessary)

13. Date of Next TAC Meeting – July 20, 2012

14. Other Business Not Requiring Committee Action

LSTAC Meeting
March 16, 2012
Agenda (Cont.)

15. Adjourn