

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 SHAWN P. COOK
Deputy Attorney General
4 State Bar No. 117851
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-9954
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
9 **GEOLOGISTS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 947-A

12 **JOHN E. TRACY**
13 **68 West Stratford**
14 **Thousand Oaks, CA 91360**
Civil Engineer License No. C 15566

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 Respondent.
16

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding that the following matters are true:

19 PARTIES

20 1. Richard B. Moore, PLS (Complainant) is the Executive Officer of the Board for
21 Professional Engineers, Land Surveyors, and Geologists. He brought this action solely in his
22 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the
23 State of California, by Shawn P. Cook, Deputy Attorney General.

24 2. John E. Tracy (Respondent) is represented in this proceeding by attorney Brian K.
25 Stewart, Esq., whose address is Collins, Collins, Muir & Stewart, LLP; P.O. Box 250; South
26 Pasadena, CA 91030.

27 3. On or about March 24, 1965, the Board for Professional Engineers, Land Surveyors,
28 and Geologists issued Civil Engineer License No. C 15566 to John E. Tracy (Respondent). The

1 Civil Engineer License was in full force and effect at all times relevant to the charges brought in
2 Accusation No. 947-A and will expire on June 30, 2013, unless renewed.

3 JURISDICTION

4 4. Accusation No. 947-A was filed before the Board for Professional Engineers, Land
5 Surveyors, and Geologists (Board), Department of Consumer Affairs, and is currently pending
6 against Respondent. The Accusation and all other statutorily required documents were properly
7 served on Respondent on May 18, 2011. Respondent timely filed his Notice of Defense
8 contesting the Accusation. A copy of Accusation No. 947-A is attached as Exhibit A and
9 incorporated by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 947-A. Respondent also has carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
14 Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 8. Respondent does not admit the truth of each and every charge and allegation in
26 Accusation No. 947-A and does not admit any liability or fault. Notwithstanding the foregoing,
27 Respondent hereby freely and voluntarily surrenders his Civil Engineer License, No. C 15566 for
28 the Board's formal acceptance.

1 license issued by the Board, the Board shall treat it as a new application for licensure.
2 Respondent must comply with all the laws, regulations, and procedures for licensure in effect at
3 the time the application is filed, including but not limited to submitting a completed application
4 and the requisite fee and taking and passing the required examination(s), and all of the charges
5 and allegations contained in the Accusation shall be deemed to be true, correct, and admitted by
6 Respondent when the licensing agency determines whether to grant or deny the application.

7 ACCEPTANCE

8 I have carefully read the above Stipulated Surrender of License and Order and have fully
9 discussed it with my attorney, Brian K. Stewart, Esq.. I understand the stipulation and the effect
10 it will have on my Civil Engineer License. I enter into this Stipulated Surrender of License and
11 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
12 of the Board for Professional Engineers, Land Surveyors, and Geologists.

13 DATED: May 30, 2012 original signed
14 JOHN E. TRACY
Respondent

15 I have read and fully discussed with Respondent John E. Tracy the terms and conditions
16 and other matters contained in this Stipulated Surrender of License and Order. I approve its form
17 and content.

18 DATED: May 30, 2012 original signed
19 BRIAN K. STEWART, ESQ.
20 Attorney for Respondent

21 ENDORSEMENT

22 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
23 for consideration by the Board for Professional Engineers, Land Surveyors, and Geologists of the
24 Department of Consumer Affairs.

25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated:

5/31/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising ~~Deputy~~ Attorney General

Original Signed

~~SHAWN P. COOK~~
Deputy Attorney General
Attorneys for Complainant

LA2010502365
Stipulation.rtf

Exhibit A

Accusation No. 947-A

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 SHAWN P. COOK
Deputy Attorney General
4 State Bar No. 117851
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-9954
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

8 **BEFORE THE BOARD FOR**
9 **PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 947-A

12 **JOHN E. TRACY**
68 West Stratford
13 Thousand Oaks, CA 91360

A C C U S A T I O N

14 Civil Engineer License No. C 15566

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Joanne Arnold (Complainant) brings this Accusation solely in her official capacity as
20 the Acting Executive Officer of the Board for Professional Engineers, Land Surveyors, And
21 Geologists , Department of Consumer Affairs (Board).

22 2. On or about March 24, 1965, the Board issued Civil Engineer License No. C 15566 to
23 John E. Tracy (Respondent). The Civil Engineer License was in full force and effect at all times
24 relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

28 ///

STATUTORY PROVISIONS

1
2 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or
3 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
4 action during the period within which the license may be renewed, restored, reissued or
5 reinstated.

6 5. Section 6731 states, in pertinent part, that “Civil engineers registered prior to
7 January 1, 1982, shall be authorized to practice all land surveying as defined in Chapter 15
8 (commencing with Section 8700) of Division 3.”

9 6. Section 8726 states, in pertinent part:

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

13

14 “(e) By the use of the principles of land surveying determines the position for any
15 monument or reference point which marks a property line, boundary, or corner, or sets, resets, or
16 replaces any monument or reference point.

17

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

21

22 “(n) Renders a statement regarding the accuracy of maps or measured survey data. . . .”

23 7. Section 8759 states, in pertinent part:

24 “(a) A licensed land surveyor or registered civil engineer authorized to practice land
25 surveying shall use a written contract when contracting to provide professional services to a client
26 pursuant to this chapter. The written contract shall be executed by the licensed land surveyor or
27 registered civil engineer and the client, or his or her representative, prior to the licensed land
28 surveyor or registered civil engineer commencing work, unless the client knowingly states in

1 writing that work may be commenced before the contract is executed. The written contract shall
2 include, but not be limited to, all of the following:

3

4 (3) The name, address, and license or certificate number of the licensed land surveyor or
5 registered civil engineer, and the name and address of the client. . . .”

6 8. Section 8780 states, in pertinent part:

7 "The board may receive and investigate complaints against licensed land surveyors and
8 registered civil engineers, and make findings thereon.

9 "By a majority vote, the board may reprove, suspend for a period not to exceed two years,
10 or revoke the license or certificate of any licensed land surveyor or registered civil engineer,
11 respectively, licensed under this chapter or registered under the provisions of Chapter 7
12 (commencing with Section 6700), whom it finds to be guilty of:

13 "(a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.

14 "(b) Any negligence or incompetence in his or her practice of land surveying.

15

16 "(d) Any violation of any provision of this chapter or of any other law relating to or
17 involving the practice of land surveying. . . .”

18 **REGULATORY PROVISIONS**

19 9. California Code of Regulations, title 16, section 404, subdivision (w), provides:

20 “For the sole purpose of investigating complaints and making findings thereon under
21 Sections 6775 and 8780 of the Code, ‘negligence’ as used in Sections 6775 and 8780 of the Code
22 is defined as the failure of a licensee, in the practice of professional engineering or land
23 surveying, to use the care ordinarily exercised in like cases by duly licensed professional
24 engineers and land surveyors in good standing.”

25 **RESTITUTION**

26 10. Government Code section 11519 states, in pertinent part:

27 “(b) A stay of execution may be included in the decision or if not included therein may be
28 granted by the agency at any time before the decision becomes effective. The stay of execution

1 provided herein may be accompanied by an express condition that respondent comply with
2 specified terms of probation; provided, however, that the terms of probation shall be just and
3 reasonable in the light of the findings and decision.

4

5 (d) As used in subdivision (b), specified terms of probation may include an order of
6 restitution. Where restitution is ordered and paid pursuant to the provisions of this subdivision,
7 the amount paid shall be credited to any subsequent judgment in a civil action. . . .”

8 **COST RECOVERY**

9 11. Section 125.3 provides, in pertinent part, that the board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case.

13 **KILLICK PROJECT**

14 12. On or about April 5, 2005, Respondent dba CVE Engineering, Inc. contracted with
15 Laurie and Greg Killick for The Killick Family Trust, as owner-builder, to prepare a topographic
16 survey and map for purpose of constructing a new single family residence, and in about
17 November 2005, Respondent contracted to perform a field survey, stake the property setbacks,
18 and mark and identify the building corners at 1265 Combs Road, Newbury Park, California,
19 (Killick Project). Respondent’s contract was executed by an unregistered engineer, Francois
20 Rene Lussier.

21 13. The Killick Project’s architectural site plans, by Ron Pucillo¹, were stamped approved
22 by the City of Thousand Oaks Community Development Department, Building Division, on or
23 about September 1, 2005, and by the City Planning division on or about October 24, 2005. The
24 approved plans show the structures first floor to have 10 feet setbacks² from the property lines on

25 ¹ The Architect is well known in the industry as the professional who locates the residence
26 on a parcel and is responsible for complying with the city’s planning and building departments’
27 specifications and requirements for minimum setbacks, number of stories, structure height, open
28 space, and other requirements.

² The planning and building department requires a 5 feet property line structural setback.
The architectural plan identifies a 10 feet setback that allows the second story cantilever overhang
(continued...)

1 the east and west, and the second story has a cantilever overhang.

2 14. On or about December 1, 2005, with a \$300 retainer in-hand from Mr. and Mrs.
3 Killick, the Respondent surveyed the Killick Project and set stakes marking the building corners
4 at 5 feet from the east property line.

5 15. On or about February 22, 2006, the structural engineer's "Footing and Caisson Plans"
6 were prepared by David Awrey, RCE 32782, and are typical of a structural engineer³ in that they
7 show the foundation design but do not show foundation distance relationship to the property lines.
8 The plan shows the marked caissons to be 10 feet deep.

9 16. On or about March 22, 2006, Respondent and the structural engineer discussed
10 interior foundation dimensions for caisson staking.

11 17. On or between March 22, 2006, and July 14, 2006, Respondent marked the exterior
12 and interior caisson placements, at 5 feet from the east property line, and a contractor dug and
13 poured caissons and a structural foundation following Respondent's staked markings.

14 18. On or about July 14, 2006, Mr. and Mrs. Killick found that the contractor constructed
15 the foundation in an incorrect location by 5 feet and began mitigating measures to correct the
16 error.

17 19. On or about August 23, 2006, Mr. and Mrs. Killick filed a complaint with the Board
18 against Respondent, documenting a mitigating cost of \$22,165.00, as of that date, with other costs
19 pending, to correct the misplaced caissons and foundation to build their new home.

20 20. On or about August 31, 2006, an investigation was initiated by the Board against
21 Respondent.

22 21. On or about November 5, 2006, March 5, 2007, March 19, 2007, January 21, 2008,
23 and November 27, 2008, Respondent complied with the Board's investigation providing written
24 correspondence.

25 ///

26 _____
27 to conform to the 5 feet setback requirement.

28 ³ Locating the residence on the site is not the responsibility of the structural engineer.
Structural engineer definitions, see Cal. Code Regs., tit. 16, § 404(ff)(gg).

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Negligence in Land Surveying)**

3 22. Respondent is subject to disciplinary action under section 8780, subdivision (b), in
4 conjunction with California Code of Regulations, title 16, section 404, subdivision (w), in that on
5 the Killick Project, he committed acts of negligence when he failed to obtain the approved
6 architect's site plan prior to performing construction staking causing him to stake foundation and
7 caissons in an incorrect location. The contractor constructed the foundation in the incorrect
8 location. Mitigating measures to correct the error caused severe economic damages and left a
9 redundant foundation and 10 feet deep caissons 5 feet out from the built structure. Complainant
10 refers to and by this reference incorporates the allegations set forth above in paragraphs 12 - 21,
11 inclusive, as though set forth fully.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Fraud, Deceit or Misrepresentation)**

14 23. Respondent is subject to disciplinary action under section 8780, subdivision (a), in
15 that on the Killick Project, in responses to the Board's investigation inquiries, Respondent made
16 deceptive statements to the Board and Mr. and Mrs. Killick shifting fault to the structural
17 engineer for the incorrect foundation location. Complainant refers to and by this reference
18 incorporates the allegations set forth above in paragraphs 12 - 22, inclusive, as though set forth
19 fully.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Written Contract Issued Without Signature)**

22 24. Respondent is subject to disciplinary action under section 8780, subdivision (d), in
23 conjunction with 8759, subdivision (a), in that on the Killick Project, Respondent failed to
24 execute the written contract with Mr. and Mrs. Killick, or their representative, and allowed an
25 unlicensed individual from his firm to sign the contract with the client. Complainant refers to and
26 by this reference incorporates the allegations set forth above in paragraph 12, inclusive, as though
27 set forth fully.

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Contract Failed to Include Licensee and License)**

3 25. Respondent is subject to disciplinary action under section 8780, subdivision (d), in
4 conjunction with section 8759(a)(3), in that on the Killick Project, Respondent failed to include
5 his name, the licensee, and his license number on the contract. Complainant refers to and by this
6 reference incorporates the allegations set forth above in paragraph 12, inclusive, as though set
7 forth fully.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board issue a decision:

- 11 1. Revoking or suspending Civil Engineer License No. C 15566, issued to Respondent;
- 12 2. Ordering restitution of all damages according to proof suffered by the Killick Project
13 owners, Laurie Killick, Greg Killick and The Killick Family Trust, as a condition of probation in
14 the event probation is ordered;
- 15 3. Ordering restitution of all damages suffered by the Killick Project owners, Laurie
16 Killick, Greg Killick and The Killick Family Trust, as a result of Respondent's conduct as a
17 licensee, as a condition of restoration of Civil Engineer License No. C 15566, issued to
18 Respondent;
- 19 4. Ordering Respondent to pay the Board the reasonable costs of the investigation and
20 enforcement of this case, pursuant to section 125.3;
- 21 5. Taking such other and further action as deemed necessary and proper.

22 DATED: 2/14/11

Original Signed

23 JOANNE ARNOLD
24 Acting Executive Officer
25 Board For Professional Engineers, Land Surveyors,
26 And Geologists
27 Department of Consumer Affairs
28 State of California
Complainant

LA2010502365
08/05/2010dmm
50714867.doc