

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

In the Matter of the Accusation Against:

**MICHAEL STUART LEMKE**  
3450 Page Street  
Redwood City, CA 94063

Land Surveyor License No. L 3602

Respondent.

Case Number 1020-A  
OAH Number 2012120612

**DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 12, 2013.

It is so ORDERED June 13, 2013.

original signed  
FOR THE BOARD FOR PROFESSIONAL ENGINEERS, LAND  
SURVEYORS, AND GEOLOGISTS  
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
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Deputy Attorney General  
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6 Telephone: (510) 622-2143  
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

12 **MICHAEL STUART LEMKE**  
13 **3450 Page Street**  
14 **Redwood City, California 94063**  
15 **Land Surveyor License Number L 3602**

16 Respondent.

Case Number 1020-A  
OAH Number 2012120612

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

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

20 **PARTIES**

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

26 2. Respondent Michael Stuart Lemke is representing himself in this proceeding and has  
27 chosen not to exercise his right to be represented by counsel.

28 3. On or about January 13, 1969, the Board issued Land Surveyor License Number

1 L 3602 to respondent. The Land Surveyor License was in full force and effect at all times  
2 relevant to the charges brought in Accusation Number 1020-A and will expire on June 30, 2014,  
3 unless renewed.

#### 4 JURISDICTION

5 4. Accusation Number 1020-A was filed before the Board and is currently pending  
6 against respondent. The accusation and all other statutorily required documents were properly  
7 served on respondent on November 9, 2012. Respondent timely filed his notice of defense  
8 contesting the accusation. A copy of Accusation Number 1020-A is attached as exhibit A and  
9 incorporated by reference.

#### 10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, and understands the charges and allegations in  
12 Accusation Number 1020-A. Respondent also has carefully read, and understands the effects of  
13 this Stipulated Surrender of License and Order.

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

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

#### 23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in Accusation  
25 Number 1020-A, agrees that cause exists for discipline, and hereby surrenders his Land Surveyor  
26 License Number L 3602 for the Board's formal acceptance.

27 9. Respondent understands that by signing this stipulation he enables the Board to issue  
28 an order accepting the surrender of his Land Surveyor License without further process.

**CONTINGENCY**

1  
2       10. This stipulation shall be subject to approval by the Board. Respondent understands  
3 and agrees that counsel for complainant and the staff of the Board may communicate directly with  
4 the Board regarding this stipulation and surrender, without notice to or participation by  
5 respondent. By signing the stipulation, respondent understands and agrees that he may not  
6 withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers  
7 and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the  
8 Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this  
9 paragraph; it shall be inadmissible in any legal action between the parties; and the Board shall not  
10 be disqualified from further action by having considered this matter.

11       11. The parties understand and agree that facsimile copies of this Stipulated Surrender of  
12 License and Order, including facsimile signatures, shall have the same force and effect as the  
13 originals.

14       12. This Stipulated Surrender of License and Order is intended by the parties to be an  
15 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
16 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
17 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order  
18 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing  
19 executed by an authorized representative of each of the parties.

20       13. In consideration of the foregoing admissions and stipulations, the parties agree that  
21 the Board may, without further notice or formal proceeding, issue and enter the following Order:

**ORDER**

22  
23       IT IS HEREBY ORDERED that Land Surveyor License Number L 3602, issued to  
24 respondent Michael Stuart Lemke, is surrendered and accepted by the Board for Professional  
25 Engineers, Land Surveyors, and Geologists.

26       1. The surrender of respondent's land surveyor license and the acceptance of the  
27 surrendered license by the Board shall constitute the imposition of discipline against respondent.

28       ///

1 This stipulation constitutes a record of the discipline and shall become a part of respondent's  
2 license history with the Board.

3 2. Respondent shall lose all rights and privileges as a land surveyor in California as of  
4 the effective date of the Board's Decision and Order.

5 3. Respondent shall cause to be delivered to the Board his pocket license and his wall  
6 certificate on or before the effective date of the Decision and Order.

7 4. Respondent agrees not to petition for reinstatement of the surrendered license.  
8 Respondent agrees not to apply for any license issued by the Board for three years from the  
9 effective date of this surrender. Respondent understands and agrees that if he ever applies for any  
10 license issued by the Board, the Board shall treat it as a new application for licensure.  
11 Respondent must comply with all the laws, regulations, and procedures for licensure in effect at  
12 the time the application is filed, including but not limited to submitting a completed application  
13 and the requisite fee and taking and passing the required examination(s), and all of the charges  
14 and allegations contained in Accusation Number 1020-A shall be deemed to be true, correct, and  
15 admitted by respondent when the licensing agency determines whether to grant or deny the  
16 application.

17 ACCEPTANCE

18 I have carefully read the Stipulated Surrender of License and Order. I understand the  
19 stipulation and the effect it will have on my Land Surveyor License. I enter into this Stipulated  
20 Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound  
21 by the Decision and Order of the Board for Professional Engineers, Land Surveyors, and  
22 Geologists.

23  
24 DATED: MAY 30 2013 *Original Signed*  
25 MICHAEL STUART LEMKE  
26 Respondent

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**ENDORSEMENT**

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

Dated: 6-4-13

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
DIANN SOKOLOFF  
Supervising Deputy Attorney General

*Original Signed*  
GREGORY TUSS  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation Number 1020-A**

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 GREGORY TUSS  
Deputy Attorney General  
4 State Bar Number 200659  
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10 **GEOLOGISTS**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

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12 **MICHAEL STUART LEMKE**  
13 **3450 Page Street**  
14 **Redwood City, California 94063**

**A C C U S A T I O N**

15 **Land Surveyor License Number L 3602**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Complainant Richard B. Moore, PLS, brings this Accusation solely in his official  
21 capacity as the Executive Officer of the Board for Professional Engineers, Land Surveyors, and  
22 Geologists (Board), Department of Consumer Affairs.

23 2. On or about January 13, 1969, the Board issued Land Surveyor License Number  
24 L 3602 to respondent Michael Stuart Lemke. This land surveyor license was in full force and  
25 effect at all times relevant to the charges brought in this Accusation and will expire on June 30,  
26 2014, unless renewed.

27 ///

28

1 **JURISDICTION**

2 3. This Accusation is brought before the Board, Department of Consumer Affairs, under  
3 the authority of the following laws. All section references are to the Business and Professions  
4 Code unless otherwise indicated.

5 4. Section 118, subdivision (b), provides:

6 “The suspension, expiration, or forfeiture by operation of law of a license issued by a board  
7 in the department, or its suspension, forfeiture, or cancellation by order of the board or by order  
8 of a court of law, or its surrender without the written consent of the board, shall not, during any  
9 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its  
10 authority to institute or continue a disciplinary proceeding against the licensee upon any ground  
11 provided by law or to enter an order suspending or revoking the license or otherwise taking  
12 disciplinary action against the licensee on any such ground.”

13 5. Section 8790 provides:

14 “The board shall enforce all of the provisions of this chapter and cause the prosecution of  
15 all violations coming to its notice.”

16 6. Section 8791 provides:

17 “It is the duty of the respective officers charged with the enforcement of laws to prosecute  
18 all persons charged with the violation of any of the provisions of this chapter.”

19 **STATUTORY AUTHORITY**

20 7. Section 8780 of the Code states, in pertinent part:

21 “The board may receive and investigate complaints against licensed land surveyors and  
22 registered civil engineers, and make findings thereon.

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

27 . . .

28 “(b) Any negligence or incompetence in his or her practice of land surveying.”

1 8. California Code of Regulations, title 16, section 404 provides, in pertinent part:  
2 “For the purpose of the rules and regulations contained in this chapter, the following terms  
3 are defined. No definition contained herein authorizes the practice of professional engineering as  
4 defined in the Professional Engineers Act.

5 . . .

6 “(u) For the sole purpose of investigating complaints and making findings thereon under  
7 Sections 6775 and 8780 of the Code, ‘incompetence’ as used in Sections 6775 and 8780 of the  
8 Code is defined as the lack of knowledge or ability in discharging professional obligations as a  
9 professional engineer or land surveyor.

10 . . .

11 “(dd) For the sole purpose of investigating complaints and making findings thereon under  
12 Sections 6775 and 8780 of the Code, ‘negligence’ as used in Sections 6775 and 8780 of the Code  
13 is defined as the failure of a licensee, in the practice of professional engineering or land  
14 surveying, to use the care ordinarily exercised in like cases by duly licensed professional  
15 engineers and land surveyors in good standing.”

16 **COST RECOVERY**

17 9. Section 125.3, subdivision (a), provides, in pertinent part:

18 “Except as otherwise provided by law, in any order issued in resolution of a disciplinary  
19 proceeding before any board within the department . . . upon request of the entity bringing the  
20 proceedings, the administrative law judge may direct a licentiate found to have committed a  
21 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
22 investigation and enforcement of the case.”

23 **FACTUAL BACKGROUND**

24 10. In or about August 2009 and March 2010, respondent’s company, American Land  
25 Surveying, Inc., was hired to locate the corners of the property at 992 Meadowsweet Drive, Corte  
26 Madera, California. Respondent was the licensee in responsible charge overseeing the field work  
27 conducted by Jozef Elemen, certified land surveyor-in-training and chief of the survey crew.

28 ///



1 17. Respondent has subjected his land surveyor license to disciplinary action for  
2 incompetence under section 8780, subdivision (b). As set forth in paragraphs 10-13 above, he  
3 was incompetent as the licensee in responsible charge overseeing the survey crew which failed to  
4 gather sufficient information to set the boundary and failed to recognize or observe the  
5 controlling elements in establishing the boundary.

6 **DISCIPLINE CONSIDERATIONS**

7 18. To determine the degree of discipline, if any, to be imposed on respondent,  
8 complainant alleges that on or about December 8, 2006, in a prior action, the Board issued  
9 Citation Number 5187-L and ordered respondent pay a \$500.00 fine and no longer violate  
10 sections 8762, subdivision (c), and 8780, subdivision (b). That citation is now final and is  
11 incorporated by reference as if fully set forth.

12 **PRAYER**

13 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this  
14 Accusation, and that following the hearing, the Board for Professional Engineers, Land  
15 Surveyors, and Geologists issue a decision:

- 16 1. Revoking or suspending Land Surveyor License Number L 3602, issued to Michael  
17 Stuart Lemke;
- 18 2. Ordering Michael Stuart Lemke to pay the Board for Professional Engineers, Land  
19 Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case,  
20 pursuant to Business and Professions Code section 125.3; and
- 21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 11/7/12

*Original Signed*

23 RICHARD B. MOORE, PLS  
24 Executive Officer  
25 Board for Professional Engineers, Land Surveyors, and  
26 Geologists  
27 Department of Consumer Affairs  
28 State of California  
*Complainant*

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