

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

In the Matter of the Accusation Against:

GENE ERNIE ROSECRANS
6454 East Smoke Tree Avenue
Oak Park, CA 91377

Land Surveyor License No. L 4034,

Respondent.

Case No. 894-A

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists as its Decision in this matter.

This Decision shall become effective on September 28, 2012.

IT IS SO ORDERED August 30, 2012.

Original Signed

~~BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS
Department of Consumer Affairs
State of California~~

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
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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. 894-A

12 **GENE ERNIE ROSECRANS**
6454 E. Smoke Tree Ave.
13 Oak Park, CA 91377
14 Land Surveyor License No. L 4034

OAH No. 2012010358

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Respondent.

16
17 In the interest of a prompt and speedy settlement of this matter, consistent with the public
18 interest and the responsibility of the Board for Professional Engineers, Land Surveyors, and
19 Geologists of the Department of Consumer Affairs, the parties hereby agree to the following
20 Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval
21 and adoption as the final disposition of the Accusation.

22 PARTIES

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

27 2. Respondent Gene Ernie Rosecrans (Respondent) is representing himself in this
28 proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about September 15, 1972, the Board for Professional Engineers, Land Surveyors, and Geologists issued Land Surveyor License No. L 4034 to Gene Ernie Rosecrans (Respondent). The Land Surveyor License was in full force and effect at all times relevant to the charges brought in Accusation No. 894-A and will expire on June 30, 2012, unless renewed.

JURISDICTION

4. Accusation No. 894-A was filed before the Board for Professional Engineers, Land Surveyors, and Geologists (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 22, 2011. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 894-A is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Accusation No. 894-A. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

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1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 894-A.

4 10. Respondent agrees that his Land Surveyor License is subject to discipline and he
5 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

6 CONTINGENCY

7 11. This stipulation shall be subject to approval by the Board for Professional Engineers,
8 Land Surveyors, and Geologists. Respondent understands and agrees that counsel for
9 Complainant and the staff of the Board for Professional Engineers, Land Surveyors, and
10 Geologists may communicate directly with the Board regarding this stipulation and settlement,
11 without notice to or participation by Respondent. By signing the stipulation, Respondent
12 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
13 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
14 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
15 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
16 and the Board shall not be disqualified from further action by having considered this matter.

17 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
18 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
19 effect as the originals.

20 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
21 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
22 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
23 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
24 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
25 writing executed by an authorized representative of each of the parties.

26 14. In consideration of the foregoing admissions and stipulations, the parties agree that
27 the Board may, without further notice or formal proceeding, issue and enter the following
28 Disciplinary Order:

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1 7. **Examination.** Within sixty (60) days from the effective date of the decision, the
2 Respondent shall successfully complete and pass the California Laws and Board Rules
3 examination, as administered by the Board.

4 8. **Ethics Course.** Within two and one-half (2 ½) years from the effective date of the
5 decision, the Respondent shall successfully complete and pass a course in professional ethics,
6 approved in advance by the Board or its designee.

7 9. **Notification.** Within thirty (30) days from the effective date of the decision, the
8 Respondent shall provide the Board with evidence that he has provided all persons or entities with
9 whom he has a contractual or employment relationship such that the relationship is in the area of
10 practice of professional engineering and/or professional land surveying in which the violation
11 occurred with a copy of the decision and order of the Board and shall provide the Board with the
12 name and business address of each person or entity required to be so notified. During the period
13 of probation, the Respondent may be required to provide the same notification of each new
14 person or entity with whom he has a contractual or employment relationship such that the
15 relationship is in the area of practice of professional engineering and/or land surveying in which
16 the violation occurred and shall report to the Board the name and address of each person or entity
17 so notified.

18 10. **Take And Pass Examinations.** Within two and one-half (2 ½) years from the
19 effective date of the decision, the Respondent shall successfully complete and pass, with a grade
20 of "C" or better, one (1) college-level land surveying course, which must be related to the areas of
21 violation alleged in the Accusation. Said course shall be approved in advance by the Board or its
22 designee. The Respondent shall provide the Board with official proof of completion of the
23 requisite course. For purposes of this condition, "college-level course" shall mean a course
24 offered by a community college or a four-year university of three semester units or the equivalent;
25 "college-level course" does not include seminars.

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1 ACCEPTANCE

2 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
3 stipulation and the effect it will have on my Land Surveyor License. I enter into this Stipulated
4 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
5 bound by the Decision and Order of the Board for Professional Engineers, Land Surveyors, and
6 Geologists.

7
8 DATED: 6-29-12

Original Signed

9 GENE ERNIE ROSECRANS
Respondent

10
11 ENDORSEMENT

12 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
13 submitted for consideration by the Board for Professional Engineers, Land Surveyors, and
14 Geologists of the Department of Consumer Affairs.

15 Dated: 6-29-12

Respectfully submitted,

16
17 KAMALA D. HARRIS
Attorney General of California
18 GLORIA A. BARRIOS
Supervising Deputy Attorney General

19 *Original Signed*

20 M. TRAVIS PEERY
21 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 894-A

1 KAMALA D. HARRIS
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2 GLORIA A. BARRIOS
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11 In the Matter of the Accusation Against:

Case No. 894-A

12 **GENE ERNIE ROSECRANS**
13 **6454 E. Smoke Tree Ave.**
Oak Park, CA 91377
14 **Land Surveyor License No. L 4034**

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about September 15, 1972, the Board for Professional Engineers, Land
22 Surveyors, and Geologists issued Land Surveyor License Number L 4034 to Gene Ernie
23 Rosecrans (Respondent). The Land Surveyor License expired on June 30, 2006 due to non-
24 payment of renewal fees and was renewed on September 29, 2006. The Land Surveyor License
25 expired again on June 30, 2008 due to non-payment of renewal fees and was renewed on
26 September 2, 2008. The Land Surveyor License expired again on June 30, 2010 due to non-
27 payment of renewal fees and was renewed on July 13, 2010. Respondent's license is currently in
28 full force and effect and will expire on June 30, 2012, unless renewed.

1 **JURISDICTION**

2 3. This Accusation is brought before the Board for Professional Engineers, Land
3 Surveyors, and Geologists (Board), Department of Consumer Affairs, under the authority of the
4 following laws. All section references are to the Business and Professions Code unless otherwise
5 indicated.

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

10 **STATUTORY PROVISIONS**

11 5. Section 8780 of the Code provides grounds for disciplinary action against land
12 surveyors and civil engineers:

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

15 "By a majority vote, the board may reprove, suspend for a period not to exceed two
16 years, or revoke the license or certificate of any licensed land surveyor or registered
17 civil engineer, respectively, licensed under this chapter [Chapter 15, Business and
Professions Code sections 8700 – 8805] or registered under the provisions of
Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:

18 . . .

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

21 . . .

22 "(d) Any violation of any provision of this chapter [Chapter 15,
23 Business and Professions Code sections 8700 – 8805] or of any other law relating
24 to or involving the practice of land surveying."

25 6. Section 8759 of the Code requires the use of a written contract when providing land
26 surveying services:

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

commenced before the contract is executed”

7. Section 8761 of the Code prohibits unauthorized practice:

. . .

“(e) It is unlawful for any person to stamp or seal any map, plat, report, description, or other document with the seal after the certificate of the licensee that is named on the seal has expired or has been suspended or revoked, unless the certificate has been renewed or reissued.”

8. Section 8765 of the Code states that a record of survey is not required of any survey:

. . .

“(d) When the survey is a retracement of lines shown on a subdivision map, official map, or a record of survey, where no material discrepancies with those records are found and sufficient monumentation is found to establish the precise location of property corners thereon, provided that a corner record is filed for any property corners which are set or reset or found to be of different character than indicated by prior records. For purposes of this subdivision, a “material discrepancy” is limited to a material discrepancy in the position of points or lines, or in dimensions.”

9. Section 8772 of the Code requires the establishment of permanent markers:

“Any monument set by a licensed land surveyor or registered civil engineer to mark or reference a point on a property or land line shall be permanently and visibly marked or tagged with the certificate number of the surveyor or civil engineer setting it, each number to be preceded by the letters “L.S.” or “R.C.E.,” respectively, as the case may be or, if the monument is set by a public agency, it shall be marked with the name of the agency and the political subdivision it serves.

“Nothing in this section shall prevent the inclusion of other information on the tag which will assist in the tracing or location of the survey records which relate to the tagged monument.”

10. Section 8792 of the Code prohibits the unlicensed practice of professional land surveying:

“Every person is guilty of a misdemeanor:

“(a) Who, unless he or she is exempt from licensing under this chapter, practices, or offers to practice, land surveying in this state without legal authorization.

. . .

“(f) Who uses an expired, suspended, or revoked license.”

11. California Government Code section 66495 states:

“At the time of making the survey for the final map or parcel map unless the survey is not required pursuant to Section 66448, the engineer or surveyor shall set sufficient durable monuments to conform with the standards described in Section 8771 of the Business and Professions Code so that another engineer or surveyor may readily retrace the survey. He shall also set such additional monuments as may be required by local ordinance. The local agency shall require that at least one exterior boundary line of the land being subdivided be adequately monumented or referenced before the map is recorded.”

REGULATIONS

12. Section 404 subdivision (n) of Title 16 of the California Code of Regulations defines “incompetence”: “‘incompetence’ as used in Sections 6775 and 8780 of the Code is defined as the lack of knowledge or ability in discharging professional obligations as a professional engineer or land surveyor.”

13. Section 404 subdivision (w) of Title 16 of the California Code of Regulations defines “negligence”: “‘negligence’ as used in Sections 6775 and 8780 of the Code is defined as the failure of a licensee, in the practice of professional engineering or land surveying, to use the care ordinarily exercised in like cases by duly licensed professional engineers and land surveyors in good standing.”

COST RECOVERY

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

STATEMENT OF FACTS

FIRST SURVEY – UNITED ROAD SURVEY

15. On or about September 11, 2006, Complainant received a complaint form from William Heusser, Jr. against Respondent. Huesser claimed Respondent was hired by the neighboring property owners, Christopher and Donna Lackmeyer, to survey the property line between 3966 Patrick Henry Place and 3975 United Road in Agoura Hills, California (“United Road Survey”).

1 16. Huesser claimed that Respondent did not make a straight line using stakes to mark the
2 property line. Respondent blamed the problem on a computer glitch and corrected two of the
3 stake locations.

4 17. Huesser also claimed that Respondent surveyed the property after June 30, 2006,
5 which was the date Respondent's license expired.

6 ***SECOND SURVEY – VERNON COURT SURVEY***

7 18. On or about November 19, 2007, Complainant received a letter, dated November 15,
8 2007, from Dan MacNeil against Respondent. MacNeil, a licensed land surveyor with the City of
9 Los Angeles, claimed Respondent failed to set final monuments on Final Map 2000-3189, which
10 was recorded on June 3, 2003 ("Vernon Court Survey"). MacNeil claimed Respondent was sent
11 letters about the matter on June 15, 2005 and July 20, 2007 and that Rosecrans failed to respond.
12 MacNeil included a copy of the Final Map prepared by Respondent as well as notation that the
13 license number on Respondent's stamp was incorrect, reading "L 4043" when his correct license
14 number was L 4034.

15 19. On December 4, 2007, Enforcement Analyst Brooke Grabowski sent Respondent a
16 letter advising him of the allegations against him and requesting a response by December 31,
17 2007. On January 10, 2008, Grabowski sent Respondent a second notification, by certified mail,
18 advising him of the allegations against him and requesting a response by February 2008. This
19 letter was signed for by Respondent but he never responded to the allegations.

20 ***THIRD SURVEY – DE HALLIVAND DRIVE SURVEY***

21 20. On or about July 21, 2008, Respondent submitted a five-page map in Ventura County
22 identified as RD 3388, which he had prepared for De Hallivand Drive ("De Hallivant Drive
23 Survey"). The stamp Respondent used on the map had an expiration date of June 30, 2010.
24 Respondent's license had expired on June 30, 2008 and had not been renewed as of the date
25 Respondent submitted the map.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Negligence/Incompetence)**

3 21. Respondent is subject to disciplinary action under section 8780, subdivision (b), in
4 that he was negligent and/or incompetent in the practice of professional land surveying. The
5 circumstances are as follows:

6 a. On the United Road Survey, Respondent was negligent in his failure to manage the
7 quality and performance of his professional services with due diligence in that when Respondent
8 set stakes for a straight line where a fence and a retaining wall were scheduled to be built, he
9 failed to notice that some of the stakes were as much as two feet off line.

10 b. On the United Road Survey, Respondent was negligent in the execution of his services
11 in that he failed to set the proper monument to preserve the location of a property corner by using
12 chiseled crosses for reference points instead of Lead, Tack & Tags bearing his Land Surveyor
13 License number as required by section 8772.

14 c. On the United Road Survey, Respondent was negligent with respect to his knowledge
15 of the Land Surveyors' Act in that he made no attempt to file a Record of Survey or Corner
16 Record as required by section 8765, subdivision (d) when, as with this survey, property corners
17 are set or reset or found to be of a different character than indicated by prior records.

18 d. Respondent was negligent in his failure to maintain his license, keep it current, and be
19 sure his license had been renewed in that he twice placed his seal on a document when his license
20 was expired. The map Respondent prepared for the United Road Survey contained the date "7-
21 28-06" as well as Respondent's stamp and signature, with an expiration date of "6/2008." At the
22 time of the filing of the complaint, Respondent's license had expired June 30, 2006, and had not
23 been renewed. Respondent also submitted the five-page map for the De Hallivand Drive Survey
24 to Ventura County on July 21, 2008 with a stamp that contained a license expiration date of June
25 30, 2010 when his license had expired on June 30, 2008 and had not yet been renewed.

26 e. On the United Road and De Havilland Drive Surveys, Respondent demonstrated
27 incompetence with respect to his knowledge of the laws governing the profession of land
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1 surveying in that he violated section 8792, subdivision (f), because he performed surveys while
2 his license was expired.

3 f. On the United Road and De Havilland Drive Surveys, Respondent demonstrated
4 incompetence with respect to his knowledge of the laws governing the profession of land
5 surveying in that he violated section 8761, subdivision (e), because his seal was placed on the
6 final maps for both surveys while his license was expired.

7 g. On the United Road Survey, Respondent demonstrated incompetence with respect to
8 his knowledge of the laws governing the profession of land surveying in that he violated section
9 8772 because permanent references to property corners were set without being marked with the
10 surveyor's license number.

11 h. On the United Road Survey, Respondent demonstrated incompetence with respect to
12 his knowledge of the laws governing the professions of land surveying in that he violated section
13 8765, subdivision (d), because he did not attempt to file a Corner Record with the County
14 Surveyor.

15 i. In connection with the Vernon Court Survey, Respondent was negligent in his failure
16 to respond to the City of Los Angeles when directed by them to set monuments. In filing Parcel
17 Map No. 2000-3189, Respondent made promises on a recorded document that he intended to set
18 certain monuments on or within 6 months of being directed to do so by the City of Los Angeles.
19 When the time came for Respondent to set the monuments, he failed to do so. When challenged
20 to set the monuments and or explain why he has not set them, he failed to respond.

21 j. On the Vernon Court Survey, Respondent was negligent in that he failed to meet the
22 standard of care in the execution of his survey in that he failed to manage the quality and
23 performance of his professional services by not setting the required monuments.

24 k. In connection with the Vernon Court Survey, Respondent was negligent in his failure
25 to respond to either of two registered letters from known authorities. The circumstances are as
26 follows:

27 Respondent failed to respond to a letter from the City of Los Angeles, dated July 20, 2007,
28 which instructed him to set the monuments on the Vernon Court Survey. Respondent also failed

1 to respond to letters from Complainant dated December 4, 2007 and January 10, 2008, which
2 instructed him to verify that his number on his seal was correct and provide all information he had
3 regarding the matter, or request an extension.

4 1. Respondent demonstrated incompetence in connection with the Vernon Court Survey
5 by his lack of knowledge of the laws governing his profession.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Practicing or Offering to Practice Land Surveying without Legal Authorization)**

8 22. Respondent is subject to disciplinary action under section 8792, subdivision (a)(f), in
9 that on the United Road Survey and the De Hallivand Drive Survey he practiced or offered to
10 practice professional land surveying services with an expired license. Complainant refers to and
11 by this reference incorporates all the charges contained in paragraph 21, subparagraph (d), above,
12 as though set forth fully.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Using an Expired License)**

15 23. Respondent is subject to disciplinary action under section 8792, subdivision (f), in
16 that on both the United Road Survey and the De Hallivand Drive Survey he used an expired Land
17 Surveyor's license. Complainant refers to and by this reference incorporates all the charges
18 contained in paragraph 21, subparagraph (d), above, as though set forth fully.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Unauthorized Practice – Stamping a Document with the Seal of a Licensee Who's License**
21 **Has Expired)**

22 24. Respondent is subject to disciplinary action under section 8780, subdivision (d), in
23 conjunction with section 8761, subdivision (e), in that on both the United Road Survey and the
24 De Hallivand Drive Survey he placed his seal on the final maps for both surveys while his license
25 was expired. Complainant refers to and by this reference incorporates all the charges contained in
26 paragraph 21, subparagraph (d), above, as though set forth fully.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Have Client Sign a Written Contract to Provide Professional Land Surveying**
3 **Services)**

4 25. Respondent is subject to disciplinary action under section 8780, subdivision (d), in
5 conjunction with section 8759, subdivision (a) in that on the United Road Survey he failed to
6 have his client sign a written contract to provide professional land surveying services.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Failure to File a Corner Record After Setting Property Corner Markers)**

9 26. Respondent is subject to disciplinary action under section 8780, subdivision (d), in
10 conjunction with section 8765, subdivision (d) in that on the United Road Survey he failed to file
11 a Corner Record after setting property corner markers.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 **(Failure to Establish Permanent Markers)**

14 27. Respondent is subject to disciplinary action under section 8780, subdivision (d), in
15 conjunction with section 8772 in that on the United Road Survey he failed to establish permanent
16 markers.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 **(Failure to Set Durable Monuments After Making a Survey for a Final Map)**

19 28. Respondent is subject to disciplinary action under section 8780, subdivision (d), in
20 conjunctions with California Government Code section 66495 in that, on the Vernon Court
21 Survey, he failed to set durable monuments after making a survey for a final map.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Board for Professional Engineers, Land Surveyors, and
25 Geologists issue a decision:

26 1. Revoking or suspending Land Surveyor License Number L 4034, issued to Gene
27 Ernie Rosecrans

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1 2. Ordering Gene Ernie Rosecrans to pay the Board for Professional Engineers, Land
2 Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Business and Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
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8 DATED: 4/8/11

Original Signed

9 JOANNE ARNOLD
10 Interim Executive Officer
11 Board for Professional Engineers and Land Surveyors
12 Department of Consumer Affairs
13 State of California
14 *Complainant*

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