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

In the Matter of the Accusation against:)

DAVID FREDERICK YARRINGTON)

P. O. Box 125)

Ferndale, CA 95536)

Land Surveyor License No. L 5996,)

Respondent.)

Case No. 824-A

DECISION

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

This Decision shall become effective on August 20, 2009.

IT IS SO ORDERED July 23, 2009.

Original Signed

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

1 EDMUND G. BROWN JR.
Attorney General of California
2 WILBERT E. BENNETT
Supervising Deputy Attorney General
3 DIANN SOKOLOFF
Deputy Attorney General
4 State Bar No. 161082
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8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No.: 824-A

13 **DAVID FREDRICK YARRINGTON**
14 **P.O. Box 125**
Ferndale, California 95536
Land Surveyor License No. L 5996

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 Respondent.
16

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Cindi Christenson, P.E. (Complainant) was the Executive Officer of the Board for
21 Professional Engineers and Land Surveyors at the time of filing of the accusation, which was
22 filed in her official capacity. Her successor in interest is Joanne Arnold, the current Interim
23 Executive Officer of the Board, who is represented in this matter by Edmund G. Brown Jr.,
24 Attorney General of the State of California, by Diann Sokoloff, Deputy Attorney General.

25 2. Respondent David Fredrick Yarrington (Respondent) is representing himself in this
26 proceeding and has chosen not to exercise his right to be represented by counsel.

27 3. On or about July 8, 1988, the Board for Professional Engineers and Land Surveyors
28 issued Land Surveyor License No. L 5996 to David Fredrick Yarrington (Respondent). The Land

1 Surveyor License was in full force and effect at all times relevant to the charges brought in
2 Accusation No. 824-A and expired on December 31, 2008, unless renewed.

3 JURISDICTION

4 4. Accusation No. 824-A was filed before the Board for Professional Engineers and
5 Land Surveyors (Board) , Department of Consumer Affairs, and is currently pending against
6 Respondent. The Accusation and all other statutorily required documents were properly served
7 on Respondent on January 1, 2009. Respondent timely filed his Notice of Defense contesting the
8 Accusation. A copy of Accusation No. 824-A is attached as Exhibit A and incorporated herein by
9 reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 824-A. Respondent has also carefully read, and understands the effects of this
13 Stipulated Settlement and Disciplinary 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 understands and agrees that the charges and allegations in Accusation
25 No. 824-A, constitute a factual basis for the imposition of discipline upon his Land Surveyor
26 License.

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1 3. **Tolling of Probation.** The period of probation shall be tolled during the time
2 Respondent is practicing exclusively outside the state of California. If, during the period of
3 probation, Respondent practices exclusively outside the state of California, Respondent shall
4 immediately notify the Board in writing.

5 4. **Violation of Probation.** If Respondent violates the probationary conditions in any
6 respect, the Board, after giving Respondent notice and the opportunity to be heard, may vacate
7 the stay and reinstate the disciplinary order which was stayed. If, during the period of probation,
8 an accusation or petition to vacate stay is filed against Respondent, or if the matter has been
9 submitted to the Office of the Attorney General for the filing of such, the Board shall have
10 continuing jurisdiction until all matters are final, and the period of probation shall be extended
11 until all matters are final.

12 5. **Completion of Probation.** Upon successful completion of all of the probationary
13 conditions and the expiration of the period of probation, Respondent's license shall be
14 unconditionally restored.

15 6. **Cost Recovery.** Respondent is hereby ordered to reimburse the Board the amount of
16 \$3500 within 18 months from the effective date of this decision for its investigative and
17 prosecution costs. Failure to reimburse the Board's costs of investigation and prosecution shall
18 constitute a violation of the probation order, unless the Board agrees in writing to payment by an
19 installment plan because of financial hardship.

20 7. **Examination.** Within 90 days of the effective date of the decision, Respondent shall
21 successfully complete and pass the California Laws and Board Rules examination, as
22 administered by the Board.

23 8. **Ethics Course.** Within 18 months of the effective date of the decision, Respondent
24 shall successfully complete and pass a course in professionalism and ethics for land surveyors,
25 approved in advance by the Board or its designee.

26 9. **Notification.** Within 30 days of the effective date of the decision, Respondent shall
27 provide the Board with evidence that he has provided all persons or entities with whom he has a
28 contractual or employment relationship relating to professional land surveying with a copy of the

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ENDORSEMENT

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

Dated: May 24, 2009

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
WILBERT E. BENNETT
Supervising Deputy Attorney General

Original Signed

DIANN SOKOLOFF
Deputy Attorney General

Attorneys for Complainant

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Exhibit A

Accusation No. 824-A

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 WILBERT E. BENNETT
Supervising Deputy Attorney General
3 DIANN SOKOLOFF, State Bar No. 161082
Deputy Attorney General
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7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 824-A

12 DAVID FREDERICK YARRINGTON

A C C U S A T I O N

13 P.O. Box 125
14 Ferndale, CA 95536
Land Surveyor License No. L 5996

15 Respondent.

17 Complainant alleges:

18 PARTIES

19 1. Cindi Christenson, P.E. (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board for Professional Engineers and Land
21 Surveyors, Department of Consumer Affairs.

22 2. On or about July 8, 1988, the Board for Professional Engineers and Land
23 Surveyors issued Land Surveyor License Number L 5996 to David Frederick Yarrington
24 (Respondent). The Land Surveyor License was in full force and effect at all times relevant to the
25 charges brought herein and will expire on December 31, 2008, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Board for Professional Engineers
28 and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the

1 following laws. All section references are to the Business and Professions Code unless otherwise
2 indicated.

3 4. Section 8780 of the Code states:

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

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

10 ...

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

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

16 **PARKING STRUCTURE AT 4TH AND SAN FERNANDO IN SAN JOSE, CALIFORNIA**

17 6. Respondent was engaged to perform land surveying services with respect
18 to a commercial property, under construction, as hereafter set forth. In the course of performing
19 that engagement, respondent made a staking error, which resulted in a building encroachment
20 approximately five (5) feet over the property line and required several building modifications in
21 order to complete the construction. The circumstances are set forth below.

22 7. The subject property was a proposed multi-million dollar parking structure
23 with commercial space at 4th and San Fernando Streets in San Jose, California. This parking
24 facility project was part of an overall downtown redevelopment plan for which San Jose
25 Redevelopment Agency of the City of San Jose is responsible. The Redevelopment Agency
26 entered into contracts with Hensel Phelps Construction Company of Colorado (HP) for the
27 construction of the facility, Ellerbee Beckett (EB) architects for its design, and the Gilbane
28 Building Company for construction management services. HP entered into a sub-contract with

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PRAYER

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

A. Revoking or suspending Land Surveyor License Number L5996, issued to David Frederick Yarrington.

B. Ordering David Frederick Yarrington to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

C. Taking such other and further action as deemed necessary and proper.

DATED: 12/11/08

Original Signed
CINDI CHRISTENSON, P.E.
Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

SF2008200291