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

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In the Matter of the Accusation against:

EARL NATHAN STROM 15502 Racetrack Road Odessa, FL 33556 Case No. 946-A

Land Surveyor License No. L 6087,

Respondent.

# **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 the aboveentitled matter.

This Decision shall become effective on Deptember 2, 2011.

IT IS SO ORDERED July 28, 2011

Original Signed

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

1	KAMALA D. HARRIS					
2	Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General NICHOLAS TSUKAMAKI Deputy Attorney General					
3						
4	State Bar No. 253959 455 Golden Gate Avenue, Suite 11000					
5	San Francisco, CA 94102-7004 Telephone: (415) 703-1188					
6	Facsimile: (415) 703-5480 E-mail: Nicholas.Tsukamaki@doj.ca.gov					
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 Association Association of the Discourse of the Association of the Discourse of the Dis					
12	In the Matter of the Accusation Against: Case No. 946-A					
13	EARL NATHAN STROM 15502 Racetrack Road OAH No. 2010120536					
14	Odessa, Florida 33556 Land Surveyor License No. L 6087 DISCIPLINARY ORDER					
15	Respondent.					
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18	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-					
19	entitled proceedings that the following matters are true:					
20	PARTIES					
21	1. Joanne Arnold (Complainant) is the Acting Executive Officer of the Board for					
22	Professional Engineers, Land Surveyors, and Geologists (Board). She brought this action solely					
23	in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of					
23	the State of California, and Nicholas Tsukamaki, Deputy Attorney General.					
	2. Respondent Earl Nathan Strom (Respondent) is representing himself in this					
25	proceeding and has chosen not to exercise his right to be represented by counsel.					
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1	3. On or about May 5, 1989, the Board issued Land Surveyor License No. L 6087 to		
2	Respondent. The Land Surveyor License was in full force and effect at all times relevant to the		
3	charges brought in Accusation No. 946-A and will expire on December 31, 2011, unless renewed.		
4	JURISDICTION		
5	4. Accusation No. 946-A was filed before the Board and is currently pending against		
6	Respondent. The Accusation and all other statutorily required documents were properly served		
7	on Respondent on October 14, 2010. Respondent timely filed his Notice of Defense contesting		
8	the Accusation. A copy of Accusation No. 946-A is attached as exhibit A and incorporated		
9	herein by reference.		
10	ADVISEMENT AND WAIVERS		
11	5. Respondent has carefully read and understands the charges and allegations in		
12	Accusation No. 946-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. 946-A, if proven at a hearing, constitute cause for imposing discipline upon his license.		
26	9. For the purpose of resolving the Accusation without the expense and uncertainty of		
27	further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual		
28	basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest		
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those charges.

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

## CONTINGENCY

11. 6 This stipulation shall be subject to approval by the Board. Respondent understands 7 and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement without notice to or participation by 8 9 Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers 10 11 and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this 12 13 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter. 14

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

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

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

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# DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Land Surveyor License No. L 6087 issued to Respondent Earl Nathan Strom (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all laws and regulations related to the practices of professional engineering and professional land surveying.

7 2. Submit Reports. Respondent shall submit such special reports as the Board may
8 require.

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

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

Cost Recovery. The Respondent is hereby ordered to reimburse the Board the
 amount of \$6,417.50 within four (4) years of the effective date of this decision for its
 investigative and prosecution costs. Failure to reimburse the Board's costs of its investigation
 and prosecution shall constitute a violation of the probation order, unless the Board agrees in
 writing to payment by an installment plan because of financial hardship.

Examination. Within 60 days of the effective date of the decision, Respondent shall
 successfully complete and pass the California Laws and Board Rules examination, as
 administered by the Board.

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27 7. Ethics Course. Within four (4) years of the effective date of the decision,
28 Respondent shall successfully complete and pass a course in professional ethics, approved in

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advance by the Board or its designee.

Notification. Within 30 days of the effective date of the decision, Respondent shall 2 8. provide the Board with evidence that he has provided all persons or entities with whom he has a 3 contractual or employment relationship relating to professional land surveying services with a 4 copy of the decision and order of the Board and shall provide the Board with the name and 5 business address of each person or entity required to be so notified. During the period of 6 probation, Respondent may be required to provide the same notification of each new person or 7 entity with whom he has a contractual or employment relationship relating to professional land 8 surveying services and shall report to the Board the name and address of each person or entity so 9 notified. 10

9. Take And Pass Examinations. Within four (4) years of the effective date of the 11 decision, Respondent shall successfully complete and pass two (2) college-level courses related to 12 the areas of violation alleged in the Accusation. Said courses shall be approved in advance by the 13 Board or its designee. Respondent shall provide the Board with official proof of completion of 14 the requisite courses. For purposes of this condition, "college-level course" means a course 15 offered by a community college or a four-year university of three semester units or the equivalent; 16 it does not include seminars. 17

ACCEPTANCE

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DATED:

### I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the 19 stipulation and the effect it will have on my Land Surveyor License. I enter into this Stipulated 20 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be 21 bound by the Decision and Order of the Board for Professional Engineers, Land Surveyors, and 22 Geologists. 23

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Original Signed

EARL NATHAN STROM Respondent

1	ENDORSEMENT				
2	The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully				
3	submitted for consideration by the Board for Professional Engineers, Land Surveyors, and				
4	Geologists of the Department of Consumer Affairs.				
5	Detal				
6	Dated: May 20, 2011	Respectfully submitted,			
7		KAMALA D. HARRIS Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General			
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9		Oríginal Sígned			
10		NICHOLAS TSUKAMAKI			
11		Deputy Attorney General Attorneys for Complainant			
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# Exhibit A

Accusation No. 946-A

1	Edmund G. Brown Jr.				
2	Attorney General of California				
3	FRANK H. PACOE Supervising Deputy Attorney General NICHOLAS TSUKAMAKI Deputy Attorney General State Bar No. 253959				
4					
5	455 Golden Gate Avenue, Suite 11000				
	San Francisco, CA 94102-7004 Telephone: (415) 703-1188				
6	Facsimile: (415) 703-5480 E-mail: Nicholas.Tsukamaki@doj.ca.gov				
7	Attorneys for Complainant				
8	BEFORE THE BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS				
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA				
10					
11	In the Matter of the Accusation Against: Case No. 946-A				
12	EARL NATHAN STROM 15502 Racetrack Road				
13	Odessa, Florida 33556 Land Surveyor License No. L 6087 Respondent.				
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17	Complainant alleges:				
18	PARTIES				
19	1. David E. Brown ("Complainant") brings this Accusation solely in his official capacity				
20	as the Executive Officer of the Board for Professional Engineers and Land Surveyors ("Board"),				
21	Department of Consumer Affairs.				
22	2. On or about May 5, 1989, the Board issued Land Surveyor License Number L 6087				
23	to Earl Nathan Strom ("Respondent"). The Land Surveyor License was in full force and effect at				
24	all times relevant to the charges brought herein and will expire on December 31, 2011, unless				
25	renewed.				
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	ACCUSATION				

JURISDICTION 1 This Accusation is brought before the Board under the authority of the following 3. 2 laws. All section references are to the Business and Professions Code ("Code") unless otherwise 3 indicated. 4 STATUTORY AND REGULATORY PROVISIONS 5 Section 8780 of the Code states: 4. 6 "The board may receive and investigate complaints against licensed land surveyors and 7 registered civil engineers, and make findings thereon. 8 "By a majority vote, the board may reprove, suspend for a period not to exceed two years, 9 or revoke the license or certificate of any licensed land surveyor or registered civil engineer, 10 respectively, licensed under this chapter or registered under the provisions of Chapter 7 11 (commencing with Section 6700), whom it finds to be guilty of: 12 "(a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying. 13 "(b) Any negligence or incompetence in his or her practice of land surveying. 14 15 "(g) A breach or violation of a contract to provide land surveying services." 16 California Code of Regulations, title 16, section 404, subdivision (n), provides: "For 5. 17 the sole purpose of investigating complaints and making findings thereon under Sections 6775 18 and 8780 of the Code, 'incompetence' as used in Sections 6775 and 8780 of the Code is defined 19 as the lack of knowledge or ability in discharging professional obligations as a professional 20 engineer or land surveyor." 21 California Code of Regulations, title 16, section 404, subdivision (w), states: "For the 6. 22 sole purpose of investigating complaints and making findings thereon under Sections 6775 and 23 8780 of the Code, 'negligence' as used in Sections 6775 and 8780 of the Code is defined as the 24 failure of a licensee, in the practice of professional engineering or land surveying, to use the care 25 ordinarily exercised in like cases by duly licensed professional engineers and land surveyors in 26 good standing." 27 7. California Code of Regulations, title 16, section 476 provides, in pertinent part: 28

"To protect and safeguard the health, safety, welfare, and property of the public, every 1 person who is licensed by the Board as a professional land surveyor or professional civil engineer 2 3 legally authorized to practice land surveying, including licensees employed in any manner by a governmental entity or in private practice, shall comply with this Code of Professional Conduct. 4 A violation of this Code of Professional Conduct in the practice of professional land surveying 5 constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Section 8780 6 of the Code. This Code of Professional Conduct shall be used for the sole purpose of 7 investigating complaints and making findings thereon under Section 8780 of the Code. 8 9 "(c) Representations: 10 11 "(11) A licensee shall not misrepresent data and/or its relative significance in any 12 professional land surveying report." 13 8. Section 8762 of the Code provides, in pertinent part: 14 15 "(b) Notwithstanding subdivision (a), after making a field survey in conformity with the 16 practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the 17 county surveyor in the county in which the field survey was made a record of the survey relating 18 to land boundaries or property lines, if the field survey discloses any of the following: 19 20 "(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 21 office of the county recorder or county surveying department, or map or survey record maintained 22 by the Bureau of Land Management of the United States." 23 9. Section 118, subdivision (b), of the Code provides that the expiration of a license 24 25 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated. 26 111 27 111 28 3

COSTS 1 Section 125.3 of the Code provides, in pertinent part, that the Board may request the 2 10. administrative law judge to direct a licentiate found to have committed a violation or violations of 3 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and 4 enforcement of the case. 5 FACTUAL BACKGROUND 6 7 11. In or around 2005, Respondent prepared an ALTA/ACSM Land Title Survey of a 8 parcel of land at the corner of Camino Alto and East Blithedale Avenue in Mill Valley, California 9 ("parcel"). The survey contains and/or omits the following: a. The survey shows a "field date" of May 20, 2005, but does not contain a date of 10 drawing preparation or a date of issue. Also, although the surveyor's certification is signed and 11 12 sealed, it is not dated and does not list the names of the parties certified to. b. The survey map does not identify any evidence Respondent may have used to 13 establish the boundaries of the parcel. While the survey states that it was prepared "from a 14 balanced and adjusted traverse" and that the "[b]earings are based on the Easterly right of way 15 line of Camino Alto," the survey does not contain any controlling monumentation to support this 16 statement. 17 "Curve 3" of the survey shows a Delta angle measurement of 18°57'41". C. 18 d. 19 The survey states that Respondent did not find any "possible encroachments" on the parcel. The survey map, however, shows encroachments of public works (a sidewalk and curb) 20 on the parcel. 21 Under "surveyor certification," Respondent states: "This is to certify that this map or 22 e. plot and the survey on which it is based were made in accordance with 'Minimum Standard 23 Detail Requirements for ALTA/ACSM Land Title Surveys,' ....." 24 25 12. In or around March 2007, another land surveyor prepared a topographic map of the parcel. This topographic map differs from Respondent's survey in the following ways: 26 27 a. The topographic map depicts a building on the parcel that is approximately five feet from the location where it appears on Respondent's survey. 28 4

b. The topographic map shows two found and accepted monuments on the parcel's
 boundary and one monument that was not accepted. Respondent's survey does not show any
 monumentation around the boundary of the parcel or on the streets.

c. A street curb on Respondent's survey near the southwest corner of the parcel depicts a curve in the roadway that does not appear on the topographic map.

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13. Respondent did not file a record of survey for the parcel.

14. In or around January 2008, Respondent prepared an updated survey of the parcel.
That survey made some changes to Respondent's original survey, including the depiction of
several boundary monuments that appear in the March 2007 topographic map and a different
Delta angle measurement of Curve 3 (117°26'10"). The raw data file for the updated survey
indicates that Respondent located 59 points, including monumentation and traverse control.

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# FIRST CAUSE FOR DISCIPLINE

# (Incompetence and/or Negligence)

15. Respondent is subject to disciplinary action under section 8780, subdivision (b), of 14 the Code, and California Code of Regulations, title 16, section 404, subdivisions (n) and (w), for 15 incompetence and/or negligence in that (1) the May 2005 survey does not contain a date of 16 drawing preparation or a date of issue; (2) the May 2005 survey map does not identify any 17 evidence Respondent may have used to establish the boundaries of the parcel; (3) Curve 3 of the 18 May 2005 survey shows an incorrect Delta angle measurement; (4) the May 2005 survey wrongly 19 depicts the location of a building on the parcel; (5) the May 2005 survey fails to depict 20 monuments that exist on the boundary of the parcel; (6) the May 2005 survey depicts a curve in 21 the roadway near the parcel's southwest corner that does not exist; and (7) in preparing the 22 January 2008 survey, Respondent failed to locate a sufficient number of points to adequately 23 depict the conditions on the parcel. 24

25 26 The circumstances of Respondent's incompetence and/or negligence are set forth above in paragraphs 11, 12, and 14.

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1	SECOND CAUSE FOR DISCIPLINE			
2	(Misrepresentation of Scope of Work Performed)			
3	16. Respondent is subject to disciplinary action under section 8780, subdivision (a), of			
4	the Code in that Respondent, by committing numerous errors and omissions in the preparation of			
5	the May 2005 survey, misrepresented to his client that he had performed the survey in accordance			
6	with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys. The			
7	circumstances of this misrepresentation are set forth above in paragraphs 11, 12, and 14.			
8	THIRD CAUSE FOR DISCIPLINE			
9	(Breach or Violation of a Contract to Provide Land Surveying Services)			
10	17. Respondent is subject to disciplinary action under section 8780, subdivision (g), of			
11	the Code in that Respondent, by committing numerous errors and omissions in the preparation of			
12	the May 2005 survey and certifying that he had performed the survey in accordance with the			
13	Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, breached and/or			
14	violated a contract to provide land surveying services. The circumstances of this breach and/or			
15	violation are set forth above in paragraphs 11, 12, and 14.			
16	FOURTH CAUSE FOR DISCIPLINE			
17	(Failure to File Record of Survey)			
18	18. Respondent is subject to disciplinary action under section 8762, subdivision (b)(1), of			
19	the Code in that Respondent failed to file a record of survey for the May 2005 survey. The			
20	circumstances of this conduct are as follows:			
21	a. The May 2005 survey shows no direct monument evidence of the boundary of the			
22	parcel, which constitutes material evidence and/or physical change that does not appear on any			
23	previous recorded map of the parcel.			
24	FIFTH CAUSE FOR DISCIPLINE			
25	(Misrepresentation of Survey Data)			
26	19. Respondent is subject to disciplinary action under California Code of Regulations,			
27	title 16, section 476, subdivision (c)(11), for misrepresentation of survey data in that while the			
28	May 2005 survey states that Respondent did not find any "possible encroachments" on the parcel,			
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ACCUSATION

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1	the survey r	man denicts encroachments of	mublic works (a sidewalk and curb) on the parcel. The
1	the survey map depicts encroachments of public works (a sidewalk and curb) on the parcel. The		
2	circumstances of this misrepresentation are set forth above in paragraph 11.d.		
3	PRAYER		
4	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,		
5	and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a		
6	decision:	cision:	
7	1.	1. Revoking or suspending Land Surveyor License Number L 6087 issued to Earl	
8	Nathan Stro	om;	
9	2. Ordering Earl Nathan Strom to pay the Board the reasonable costs of the investigation		to pay the Board the reasonable costs of the investigation
10	and enforcement of this case pursuant to Business and Professions Code section 125.3;		
11	3.	Taking such other and further	r action as deemed necessary and proper.
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13	DATED: _	Dulip	Oríaínal Síaned
14	DATED: _		Drígínal Sígned DAVID E. BROWN Executive Officer
15			Board for Professional Engineers and Land
16			Surveyors Department of Consumer Affairs State of California
17			Complainant
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			ACCUSATION