

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

In the Matter of the Accusation against:)

PETE ESPINOSA)

8110 South Walnut Avenue)

Fresno, CA 93706)

Land Surveyor License No. L 6335,)

Respondent.)

Case No. 872-A

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists as its Decision in the above-entitled matter.

This Decision shall become effective on

September 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
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 ANAHITA S. CRAWFORD
Deputy Attorney General
4 State Bar No. 209545
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-8311
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:

14 **PETE ESPINOSA**
8110 S. Walnut Avenue
Fresno, CA 93706
Land Surveyor No. L 6335

15 Respondent.

Case No. 872-A

OAH No. 2010060476

16 **STIPULATED SURRENDER OF**
17 **LICENSE AND ORDER**

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. Richard B. Moore, PLS (Complainant) is the Executive Officer of the Board for
22 Professional Engineers, Land Surveyors, and Geologists. David E. Brown, former Executive
23 Officer, brought this action solely in his official capacity, such action continuing by Richard B.
24 Moore, solely in his official capacity, and Complainant is represented in this matter by Kamala D.
25 Harris, Attorney General of the State of California, by Anahita S. Crawford, Deputy Attorney
26 General.

27 2. Pete Espinosa (Respondent) is represented in this proceeding by attorney Stephen
28 Quade, whose address is The Rowell Building, 2100 Tulare St., Ste. 512, Fresno, CA 93721-
2111.

1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 872-A, agrees that cause exists for discipline and hereby surrenders his Land Surveyor No.
4 L 6335 for the Board's formal acceptance.

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

7 CONTINGENCY

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

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

22 12. This Stipulated Surrender of License and Order is intended by the parties to be an
23 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
24 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
25 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
26 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
27 executed by an authorized representative of each of the parties.
28

1 13. In consideration of the foregoing admissions and stipulations, the parties agree that
2 the Board will waive all costs of investigation and prosecution in this matter and that the Board
3 may, without further notice or formal proceeding, issue and enter the following Order:

4 **ORDER**

5 IT IS HEREBY ORDERED that Land Surveyor No. L 6335, issued to Respondent Pete
6 Espinosa, is surrendered and accepted by the Board for Professional Engineers, Land Surveyors,
7 and Geologists.

8 14. Respondent hereby freely and voluntarily surrenders his Land Surveyor License,
9 Number L 6335. This voluntary surrender shall be deemed a disciplinary action which shall
10 become part of respondent's license history with the Board.

11 15. Respondent shall lose all rights and privileges as a land surveyor in California as of
12 the effective date of the decision of the Board adopting this stipulation, including the right to use
13 any of the restricted titles associated with his license.

14 16. Respondent shall cause to be delivered to the Board the pocket identification cards
15 and wall certificate for this license on or before the effective date of the decision of the Board
16 adopting this stipulation.

17 17. Respondent agrees not to petition for reinstatement of the surrendered license.
18 Respondent agrees not to apply for any license issued by the Board for three years from the
19 effective date of this surrender. Respondent understands and agrees that if he ever applies for any
20 license issued by the Board, the Board shall treat it as a new application for licensure.

21 Respondent must comply with all the laws, regulations, and procedures for licensure in effect at
22 the time the application is filed, including but not limited to submitting a completed application
23 and the requisite fee and taking and passing the required examination(s), and all of the charges
24 and allegations contained in Accusation No. 872-A shall be deemed to be true, correct, and
25 admitted by Respondent when the licensing agency determines whether to grant or deny the
26 application.

27 18. If Respondent should ever apply or reapply for a new license or certification, or
28 petition for reinstatement of a license, by any other licensing agency in the State of California, all

1 of the charges and allegations contained in Accusation, No. 872-A shall be deemed to be true,
 2 correct, and admitted by Respondent for the purpose of any Statement of Issues or any other
 3 proceeding seeking to deny or restrict licensure.

4 ACCEPTANCE

5 I have carefully read the above Stipulated Surrender of License and Order and have fully
 6 discussed it with my attorney, Stephen Quade. I understand the stipulation and the effect it will
 7 have on my Land Surveyor's license. I enter into this Stipulated Surrender of License and Order
 8 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
 9 Board for Professional Engineers, Land Surveyors, and Geologists.

10
 11 DATED: 7-19-11 Original Signed
 12 PETE ESPINOSA
 13 Respondent

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

17 DATED: 7/19/11 Original Signed
 18 STEPHEN QUADE
 19 Attorney for 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: July 19, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General

Original Signed

ANAHITA S. CRAWFORD
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 872-A

1 EDMUND G. BROWN JR.
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 ANAHITA S. CRAWFORD
Deputy Attorney General
4 State Bar No. 209545
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-8311
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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. 872-A

12 **PETE ESPINOSA**
13 **8110 S. Walnut Avenue**
Fresno, Ca 93706

ACCUSATION

14 **Land Surveyor License No. L 6335**

15 Respondent.
16

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about June 15, 1990, the Board for Professional Engineers and Land Surveyors
24 issued Land Surveyor License Number L 6335 to Pete Espinosa (Respondent). The Land
25 Surveyor License was in full force and effect at all times relevant to the charges brought herein
26 and will expire on December 31, 2010, unless renewed.

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1 **JURISDICTION**

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

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

8 **STATUTORY PROVISIONS**

9 5. Section 8780 of the Code states:

10 The board may receive and investigate complaints against licensed land
11 surveyors and registered civil engineers, and make findings thereon.

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

15

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

17

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

19 (e) Any conviction of a crime substantially related to the qualifications, functions,
20 and duties of a land surveyor. The record of the conviction shall be conclusive evidence
thereof.

21 6. California Code of Regulations, title 16, section 404 states, in part:

22 For the purpose of the rules and regulations contained in this chapter, the
23 following terms are defined. No definition contained herein authorizes the practice of
professional engineering as defined in the Professional Engineers Act.

24

25 (n) For the sole purpose of investigating complaints and making findings
26 thereon under Sections 6775 and 8780 of the Code, "incompetence" as used in
27 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.

28 //

1 7. Section 8762 of the Code states, in part:

2 (a) Except as provided in subdivision (b), after making a field survey in
3 conformity with the practice of land surveying, the licensed surveyor or licensed civil
4 engineer may file with the county surveyor in the county in which the field survey
5 was made, a record of the survey.

6 (b) Notwithstanding subdivision (a), after making a field survey in conformity
7 with the practice of land surveying, the licensed land surveyor or licensed civil
8 engineer shall file with the county surveyor in the county in which the field survey
9 was made a record of the survey relating to land boundaries or property lines, if the
10 field survey discloses any of the following:

11 (1) Material evidence or physical change, which in whole or in part does not
12 appear on any subdivision map, official map, or record of survey previously recorded
13 or properly filed in the office of the county recorder or county surveying department,
14 or map or survey record maintained by the Bureau of Land Management of the
15 United States.

16 (2) A material discrepancy with the information contained in any subdivision
17 map, official map, or record of survey previously recorded or filed in the office of the
18 county recorder or the county surveying department, or any map or survey record
19 maintained by the Bureau of Land Management of the United States. For purposes of
20 this subdivision, a "material discrepancy" is limited to a material discrepancy in the
21 position of points or lines, or in dimensions.

22

23 (4) The establishment of one or more points or lines not shown on any
24 subdivision map, official map, or record of survey, the positions of which are not
25 ascertainable from an inspection of the subdivision map, official map, or record of
26 survey.

27

28 (c) The record of survey required to be filed pursuant to this section shall be
filed within 90 days after the setting of boundary monuments during the performance
of a field survey or within 90 days after completion of a field survey, whichever
occurs first.

8. Section 8783 of the Code states:

 A plea or verdict of guilty or a conviction following a plea of nolo contendere
made to a charge substantially related to the qualifications, functions and duties of a
land surveyor is deemed to be a conviction within the meaning of this article. The
board may order the license or certificate suspended or revoked, or may decline to
issue a license or certificate, when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under the
provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information or indictment.

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1 9. Section 493 of the Code states:

2 Notwithstanding any other provision of law, in a proceeding conducted by a
3 board within the department pursuant to law to deny an application for a license or to
4 suspend or revoke a license or otherwise take disciplinary action against a person who
5 holds a license, upon the ground that he applicant or the licensee has been convicted
6 of a crime substantially related to the qualifications, functions, and duties of the
7 licensee in question, the record of conviction of the crime shall be conclusive
8 evidence of the fact that the conviction occurred, but only of that fact, and the board
9 may inquire into the circumstances surrounding the commission of the crime in order
10 to fix the degree of discipline or to determine if the conviction is substantially related
11 to the qualifications, functions, and duties of the licensee in question.

12 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
13 'registration.'

14 10. Title 16, California Code of Regulations section 416 states:

15 For the purpose of denial, suspension, or revocation of the license of a
16 professional engineer or a land surveyor pursuant to Division 1.5 (commencing with
17 Section 475) of the Business and Professions Code, a crime or act shall be considered
18 substantially related to the qualifications, functions, and duties of a professional
19 engineer or land surveyor if, to a substantial degree, it evidences present or potential
20 unfitness of a professional engineer or land surveyor to perform the functions
21 authorized by his or her license in a manner consistent with the public health, safety,
22 or welfare. Such crimes or acts shall include, but not be limited to

COST RECOVERY

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

FIRST CAUSE FOR DISCIPLINE

(Incompetent Professional Performance)

27 12. Respondent is subject to disciplinary action under section 8780, subdivision (b) for
28 incompetence, as defined in California Code Regulations section 404, subdivision (n) in that
29 Respondent lacked the knowledge or ability to discharge his professional obligations as a land
30 surveyor when he failed to recognize his obligations. The circumstances are that in or about July
31 2003, Respondent prepared a map entitled "ALTA/ACSM Land Title Survey" showing the
32 physical features and certain parcel boundaries of land located in the City of Oroville, Butte
33 County, California for Lars Anderson and Associates, Inc., a Civil Engineering firm. The

1 beginning of the Surveyor's Certificate on the map signed by Respondent certifies that the survey
2 is based on field work and a survey of the land performed by Respondent. Subsequently,
3 Respondent did not record the survey because of his belief that his work and ALTA survey
4 preparation should not and did not constitute a field survey and thereby, did not require filing.
5 Respondent's lack of knowledge as to his obligations violates the following:

6 a. Section 8762, subdivision (b)(1), which requires that a land surveyor file a record of
7 survey with the county surveyor when he conducts a field survey that discloses material evidence
8 or physical change not appearing in any other filed or recorded map or survey in the office of the
9 county recorder, the county surveying department, or the Bureau of Land Management of the
10 United States. As more fully set forth in paragraphs 12(b) and (c) below, Respondent located
11 material discrepancies in the position of points, lines or dimensions and located points or lines
12 which did not appear on any previously recorded map or survey. As a result of these findings,
13 Respondent was required to record the field survey with the county surveyor, which he failed to
14 do.

15 b. Section 8762, subdivision (b)(2), which requires that a land surveyor file a record of
16 survey with the county surveyor when he conducts a field survey that discloses a material
17 discrepancy with the information contained in any other filed or recorded map or survey in the
18 office of the county recorder, the county surveying department, or the Bureau of Land
19 Management of the United States. Respondent's ALTA maps shows measurements taken that are
20 different from the record measurements (which are enclosed in parentheses on Respondent's
21 ALTA map). Respondent's map also shows that some of the existing survey boundary
22 monuments found during his field survey work are out of position according to his opinion and
23 method of boundary establishment. As a result of these discrepant findings, Respondent was
24 required to record the field survey with the county surveyor, which he failed to do.

25 c. Section 8762, subdivision (b)(4), which requires that a land surveyor file a record of
26 survey with the county surveyor when he conducts a field survey that establishes "one or more
27 points or lines not shown on any subdivision map, official map, or record of survey, the positions
28 of which are not ascertainable from an inspection of the subdivision map, official map, or record

1 of survey.” Here, portions of the property boundary established by Respondent were based on
2 descriptions in grant deeds that have never been shown on any previously filed or recorded map.
3 As a result of these new points and lines findings, Respondent was required to record the field
4 survey with the county surveyor, which he failed to do.

5 d. Section 8762, subdivision (c), which requires that a land surveyor file a record of
6 survey “within 90 days after the setting of boundary monuments during the performance of a field
7 survey or within 90 days after completion of a field survey, whichever occurs first.”

8 Respondent’s conduct and preparation of the ALTA map are descriptions of a field survey that
9 require filing. Respondent was required to record the field survey with the county surveyor
10 within in 90 days after its completion, which he failed to do.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Chapter Violations)**

13 13. Respondent is subject to disciplinary action under section 8780, subdivision (d) for
14 violating section 8762, subdivision (b)(1), (2), (4) and (c), as more fully set forth in paragraph 12
15 above.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Criminal Conviction)**

18 14. Respondent is subject to disciplinary action under section 8780, subdivision (e) in
19 that Respondent was convicted of a crime substantially related to the qualifications, functions,
20 and duties of a land surveyor as defined in California Code of Regulations, Title 16, Section 416.
21 On or about August 20, 2008, in the criminal proceeding entitled *People v. Peter Espinosa* in
22 Fresno County Superior Court, Case Number F08901479, Respondent was convicted on his plea
23 of nolo contendere to violating Penal Code section 664/192, subdivision (a) (attempted voluntary
24 manslaughter), Penal Code section 422 (criminal threats), and Penal Code section 12022.5,
25 subdivision (a) (use of firearm during commission of crime), felonies. The circumstances are as
26 follows:

27 15. On or about March 2, 2008, Respondent was arrested for attempted murder,
28 threatening a crime with intent to terrorize, inflicting corporal injury on a spouse/cohabitant and

1 unlawfully carrying a concealed firearm. On the date of the incident, Respondent arrived at the
2 home of T.J-P, his former fiancé, to discuss their relationship. However, the discussion became
3 heated once T.J-P discovered that Respondent was drunk, and asked him to leave the property.
4 (Respondent and T.J-P had remained outside the home.) During the argument, Respondent
5 displayed a handgun, pointed it at his own head and threatened to kill himself if he could not be
6 with T.J-P.

7 Respondent then pointed the gun at T.J-P, threatened to kill her and began advancing upon
8 her. Respondent grabbed T.J-P by the throat, pushed her against a fence and pushed the barrel of
9 the gun against her head, continuing to threaten her life. T.J-P broke free from Respondent, but
10 Respondent reached out and slammed T.J-P back against the fence again. Respondent then fired
11 one round in the air, just 6 inches from T.J-P's head. He then pushed the gun against T.J-P's head
12 and yelled, "You're dead....I'm going to kill you." T.J-P began to struggle and as she grabbed
13 Respondent's hand to push the gun away, Respondent pulled the trigger. T.J-P turned her head,
14 pushed Respondent's hand away and avoided being shot. T.J-P and Respondent then struggled to
15 gain control of the gun. T.J-P was able to get the gun from Respondent and get away until the
16 police arrived.

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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:

1. Revoking or suspending Land Surveyor Number L 6335, issued to Pete Espinosa.
2. Ordering Pete Espinosa 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/17/10

Original Signed

DAVID E. BROWN
Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

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