

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 GEOFFREY S. ALLEN  
Deputy Attorney General  
4 State Bar No. 193338  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-4455  
Facsimile: (510) 622-2270  
7 E-mail: Geoffrey.Allen@doj.ca.gov  
*Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 1041-A

13 **JAMES W. MCPHEE**  
**5640 Fruitridge Rd.**  
14 **Sacramento, CA 95820**

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

15 **Land Surveyor License No. L 6692**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Richard B. Moore, PLS (Complainant) brings this First Amended Accusation solely  
21 in his official capacity as the Executive Officer of the Board for Professional Engineers, Land  
22 Surveyors, and Geologists, Department of Consumer Affairs. This First Amended Accusation  
23 supersedes the Accusation filed by Complainant on April 18, 2014.

24 2. On or about February 14, 1992, the Board for Professional Engineers, Land  
25 Surveyors, and Geologists issued Land Surveyor License Number L 6692 to James W. McPhee  
26 (Respondent). The Land Surveyor License was in full force and effect at all times relevant to the  
27 charges brought herein and will expire on June 30, 2016, unless renewed.  
28

**JURISDICTION**

1  
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 8780 of the Code, in pertinent part, states:

7             The board may, upon its own initiative or upon the receipt of a complaint,  
8 investigate the actions of any land surveyor licensed under this chapter or any civil  
9 engineer licensed under the provisions of Chapter 7 (commencing with Section  
6700) who is legally authorized to practice land surveying and make findings  
thereon.

10            By a majority vote, the board may publicly reprove, suspend for a period not  
11 to exceed two years, or revoke the license or certificate of any land surveyor  
12 licensed under this chapter or civil engineer licensed under the provisions of  
Chapter 7 (commencing with Section 6700) who is legally authorized to practice  
land surveying on any of the following grounds:

13            . . . .

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

15            . . . .

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

18            . . . .

19       5.     Section 8762 of the Code, in pertinent part, states:

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

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

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

28            (2) A material discrepancy with the information contained in any  
subdivision map, official map, or record of survey previously recorded or filed  
in the office of the county recorder or the county surveying department, or any

1 map or survey record maintained by the Bureau of Land Management of the  
2 United States. For purposes of this subdivision, a “material discrepancy” is  
3 limited to a material discrepancy in the position of points or lines, or in  
4 dimensions.

5 (3) Evidence that, by reasonable analysis, might result in materially  
6 alternate positions of lines or points, shown on any subdivision map, official  
7 map, or record of survey previously recorded or filed in the office of the  
8 county recorder or the county surveying department, or any map or survey  
9 record maintained by the Bureau of Land Management of the United States.

10 (4) The location, relocation, establishment, reestablishment, or  
11 retracement of one or more points or lines not shown on any subdivision map,  
12 official map, or record of survey, the positions of which are not ascertainable  
13 from an inspection of the subdivision map, official map, or record of survey.

14 (5) The points or lines set during the performance of a field survey of  
15 any parcel described in any deed or other instrument of title recorded in the  
16 county recorder’s office are not shown on any subdivision map, official map,  
17 or record of survey.

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

22 (d) (1) If the 90-day time limit contained in subdivision (c) cannot be  
23 complied with for reasons beyond the control of the licensed land surveyor or  
24 licensed civil engineer, the 90-day time period shall be extended until the time  
25 at which the reasons for delay are eliminated. If the licensed land surveyor or  
26 licensed civil engineer cannot comply with the 90-day time limit, he or she  
27 shall, prior to the expiration of the 90-day time limit, provide the county  
28 surveyor with a letter stating that he or she is unable to comply. The letter  
shall provide an estimate of the date for completion of the record of survey,  
the reasons for the delay, and a general statement as to the location of the  
survey, including the assessor’s parcel number or numbers.

(2) The licensed land surveyor or licensed civil engineer shall not  
initially be required to provide specific details of the survey. However, if other  
surveys at the same location are performed by others which may affect or be  
affected by the survey, the licensed land surveyor or licensed civil engineer  
shall then provide information requested by the county surveyor without  
unreasonable delay.

...

6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
administrative law judge to direct a licentiate 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.

///

///

1 **WILMINGTON PROJECT**

2 7. Respondent prepared, approved and submitted a survey indicating compliance with  
3 standards developed by American Land Title Association and the American Congress on  
4 Surveying and Mapping (“ ALTA/ACSM survey”) for a property located at 505 Pier B Street,  
5 Wilmington, CA, on February 6, 2009, with a date of last revision on May 28, 2009. The subject  
6 property was described as: Parcels 1, 2, and 3 as described by Chicago Title Company Order No.  
7 910075085-X59, dated April 28, 2009.

8 **FIRST CAUSE FOR DISCIPLINE**

9 (Negligence)

10 8. Respondent is subject to disciplinary action under Code section 8780, subd. (b), in  
11 that Respondent was negligent with the Wilmington Project. Respondent was negligent in his  
12 preparation of the ALTA/ACSM survey for the Wilmington Project. Respondent’s negligence  
13 included, but is not limit to, the following:

14 a. Respondent failed to obtain the necessary record maps and recorded documents to  
15 identify controlling monuments and/or calls in the deed.

16 b. Respondent failed to properly establish the properties as described in the title report,  
17 including Henry Ford Avenue, the City of Long Beach/City of Los Angeles boundary line, and  
18 other calls specific to the legal description contained therein.

19 c. Respondent failed to comply with the 2005 Minimum Detail Requirements for a  
20 ALTA/ACSM survey.

21 d. Respondent prepared a legally deficient Record of Survey.

22 **SECOND CAUSE FOR DISCIPLINE**

23 (Violation of Land Surveying Law)

24 9. Respondent is subject to disciplinary action under Code section 8780, subd. (d), in  
25 that Respondent violated laws related to the practice of land surveying with the Wilmington  
26 Project. The circumstances are:

27 ///

28 ///

1 a. Respondent violated Code section 8762, subd. (b)(3) by failing to file a Record of  
2 Survey after a field survey results in a material alternate position of points or lines shown on any  
3 previously recorded map.

4 b. Respondent violated Code section 8762, subd. (b)(4) by failing to file a Record of  
5 Survey after a field survey results in the establishment of a point or line not shown on any  
6 previously recorded map.

7 c. Respondent violated Code section 8762, subd. (c) by failing to file a Record of  
8 Survey within ninety days of completing a land survey.

9 d. Respondent violated Code section 8762, subd. (d)(1) by failing to notify the County if  
10 unable to file a Record of Survey within 90 days of completing a land survey that results in the  
11 need to file a Record of Survey.

12 **SAN JOSE PROJECT**

13 10. Respondent prepared, approved and submitted a ALTA/ACSM survey for a property  
14 located at 5853/5863 Rue Ferrari Drive, San Jose, CA, on June 7, 2010, with an updated one  
15 dated June 10, 2011, both indicated as “date of last revision” on the face of the map. The subject  
16 property was described as: Parcel 1, as shown on the Parcel Map filed for record in the Office of  
17 the Recorder of the County of Santa Clara, State of California, on September 26, 630 of Maps,  
18 Pages 39 and 40.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Negligence)

21 11. Respondent is subject to disciplinary action under Code section 8780, subd. (b), in  
22 that Respondent was negligent with the San Jose Project. Respondent’s negligence included, but  
23 is not limit to, the following:

24 a. Respondent failed to use the proper procedure to show the relationship and existence  
25 of a masonry wall (near the subject property line) at the northwesterly side of the subject  
26 property.

27 b. Respondent failed to comply with the 2005 Minimum Detail Requirements for a  
28 ALTA/ACSM survey.

1 c. Respondent prepared a legally deficient Record of Survey.

2 FOURTH CAUSE FOR DISCIPLINE

3 (Violation of Land Surveying Law)

4 12. Respondent is subject to disciplinary action under Code section 8780, subd. (d), in  
5 that Respondent violated laws related to the practice of land surveying with the San Jose Project.  
6 The circumstances are as follows:

7 a. Respondent violated Code section 8762, subd. (b)(2) by failing to file a Record of  
8 Survey after a survey results in a material discrepancy with information shown on a previously  
9 recorded map.

10 b. Respondent violated Code section 8762, subd. (c) by failing to file a Record of  
11 Survey within ninety days of performing a land survey.

12 **OAKLAND PROJECT**

13 13. Respondent prepared, approved and submitted a ALTA/ACSM survey for a property  
14 located at 8350 Pardee Drive, Oakland, CA, on September 30, 2009, with a date of last revision  
15 on June 2, 2010. The subject property was described as: Lots A and B as shown on Exhibit of  
16 Parcel Map Waiver No. 01-2008 as notice in the Certificate of Compliance, Recorded as  
17 Document No. 2008-213010, Official Records of Alameda County.

18 FIFTH CAUSE FOR DISCIPLINE

19 (Negligence)

20 14. Respondent is subject to disciplinary action under Code section 8780, subd. (b), in  
21 that Respondent was negligent with the Oakland Project. Respondent's negligence included, but  
22 is not limit to, the following:

23 a. Respondent prepared a legally deficient Record of Survey.

24 b. Respondent failed to comply with the 2005 Minimum Detail Requirements for a  
25 ALTA/ACSM survey.

26 ///

27 ///

28 ///

1 SIXTH CAUSE FOR DISCIPLINE

2 (Violation of Land Surveying Law)

3 15. Respondent is subject to disciplinary action under Code section 8780, subd. (d), in  
4 that Respondent violated laws related to the practice of land surveying with the Oakland Project.

5 The circumstances are as follows:

6 a. Respondent violated Code section 8762, subd. (b)(1) by failing to file a Record of  
7 Survey after a field survey results show material evidence or physical change which is not shown  
8 on a previously recorded map.

9 b. Respondent violated Code section 8762, subd. (b)(2) by failing to file a Record of  
10 Survey after a field survey results in a material discrepancy with information shown on a  
11 previously recorded map.

12 c. Respondent violated Code section 8762, subd. (b)(4) by failing to file a Record of  
13 Survey after a field survey results in the establishment of a point or line not shown on any  
14 previously recorded map.

15 d. Respondent violated Code section 8762, subd. (c) by failing to file a Record of  
16 Survey within ninety days of completing a land survey.

17 **GARDEN GROVE PROJECT**

18 16. Respondent prepared, approved and submitted a ALTA/ACSM survey for a property  
19 located at 12831 West Street, Garden Grove, CA, on July 30, 2008, with a date of last revision on  
20 January 16, 2009. The subject property was described as: All that certain property situated in the  
21 County of Orange, State of California, described as follows: The East Half o f the Southeast  
22 Quarter of Section 33, Township 4 South, Range 10 West, in the Rancho Los Bolsas, in the City  
23 of Garden Grove, County of Orange, State of California, as said section is shown on a Map  
24 recorded in Book 51, Page 10 of Miscellaneous Maps, in the Office of the Recorder of said  
25 County.

26 ///

27 ///

28 ///

1 SEVENTH CAUSE FOR DISCIPLINE

2 (Negligence)

3 17. Respondent is subject to disciplinary action under Code section 8780, subd. (b), in  
4 that Respondent was negligent with the Garden Grove Project. Respondent's negligence  
5 included, but is not limit to, the following:

6 a. Respondent prepared a legally deficient Record of Survey.

7 b. Respondent failed to comply with the 2005 Minimum Detail Requirements for a  
8 ALTA/ACSM survey.

9 EIGHTH CAUSE FOR DISCIPLINE

10 (Violation of Land Surveying Law)

11 18. Respondent is subject to disciplinary action under Code section 8780, subd. (d), in  
12 that Respondent violated laws related to the practice of land surveying with the Oakland Project.  
13 The circumstances are as follows:

14 a. Respondent violated Code section 8762, subd. (b)(4) by failing to file a Record of  
15 Survey after a field survey results in the establishment of a point or line not shown on any  
16 previously recorded map.

17 b. Respondent violated Code section 8762, subd. (c) by failing to file a Record of  
18 Survey within ninety days of performing a land survey.

19 c. Respondent violated Code section 8762, subd. (d)(1) by failing to notify the County if  
20 unable to file a Record of Survey within 90 days of completing a land survey that results in the  
21 need to file a Record of Survey.

22 d. Respondent violated Code section 8771 by failing to set sufficient monuments during  
23 a field survey.

24 e. Respondent violated Code section 8772 by failing to properly tag monuments set  
25 during a field survey.

26 ///

27 ///

28 ///

1 **SAN RAFAEL PROJECT**

2 19. Respondent prepared, approved and submitted a ALTA/ACSM survey for a property  
3 located at 40 Professional Center Parkway in San Rafael, California, on November 27, 2012, with  
4 a date of last revision on January 14, 2013. The subject property was described as: Parcels 1, 2,  
5 and 3 as described by the Title Commitment provided by Fidelity National Title Company,  
6 Commitment No. 12-543435-KR, dated October 18, 2012.

7 NINTH CAUSE FOR DISCIPLINE

8 (Violation of Land Surveying Law)

9 20. Respondent is subject to disciplinary action under Code section 8780, subd. (d), in  
10 that Respondent violated laws related to the practice of land surveying with the San Rafael  
11 Project. The circumstances are as follows:

12 a. Respondent violated Code section 8762, subd. (b)(5) by failing to file a Record of  
13 Survey after a field survey results in points or lines set that are not shown on any previously  
14 recorded map.

15 PRAYER

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

19 1. Revoking or suspending Land Surveyor License Number L 6692 issued to James W.  
20 McPhee;

21 2. Ordering James W. McPhee to pay the Board for Professional Engineers, Land  
22 Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case,  
23 pursuant to Business and Professions Code section 125.3;

24 ///

25 ///

26 ///

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DATED: 7/17/15

*Original Signed*

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

SA2012108698  
First Amended Accusation.docx