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

In the Matter of the Accusation against:	)	
	)	
DAVID ALAN JOLLY P. O. Box 9338 Bend, OR 97708	)	Case No. 905-A
	)	
Land Surveyor License No. L 7672,	)	
	)	
Respondent.	)	
	)	

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 December 31, 2012.

IT IS SO ORDERED October 11, 2012.

Original Signed

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

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

In the Matter of the Accusation Against: **DAVID ALAN JOLLY** **3890 Vista Campana S, Unit 97** **Oceanside, CA 92057** **Land Surveyor No. L 7672** Respondent.	Case No. 905-A OAH No. 2011010785 **STIPULATED SURRENDER OF LICENSE AND ORDER**

In the interest of a prompt and speedy resolution of this matter, consistent with the public interest and the responsibility of the Board for Professional Engineers, Land Surveyors, and Geologists of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Surrender of License and Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

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

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2. Respondent David Alan Jolly is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about July 28, 2000, the Board for Professional Engineers, Land Surveyors, and Geologists issued Land Surveyor No. L 7672 to David Alan Jolly (Respondent). The Land Surveyor license was in full force and effect at all times relevant to the charges brought in Accusation No. 905-A and will expire on December 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. 905-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 August 13, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 905-A is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 905-A. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. 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.

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

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CULPABILITY

8. Respondent understands that the charges and allegations in Accusation No. 905-A, if proven at a hearing, constitute cause for imposing discipline upon his Land Surveyor license.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, if Complainant could establish a factual basis for the charges in the Accusation, then those charges would constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

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

CONTINGENCY

11. This stipulation shall be subject to approval by the Board for Professional Engineers, Land Surveyors, and Geologists. Respondent understands and agrees that counsel for Complainant and the staff of the Board for Professional Engineers, Land Surveyors, and Geologists may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by 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 and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this 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.

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

13. This Stipulated Surrender of License and 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 Surrender of License and 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 exchange for the foregoing admissions and stipulations, the Board will waive reimbursement of its costs of investigation and prosecution in this matter.

15. 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 Order:

ORDER

IT IS HEREBY ORDERED that Land Surveyor No. L 7672, issued to Respondent David Alan Jolly, is surrendered and accepted by the Board for Professional Engineers, Land Surveyors, and Geologists. The surrender is effective on December 31, 2012.

1. Respondent hereby freely and voluntarily surrenders his Land Surveyor's license. This voluntary surrender shall be deemed a disciplinary action which shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a licensed land surveyor in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board the pocket identification card and wall certificate for this license on or before the effective date of the Decision and Order.

4. Respondent shall not petition for reinstatement of his surrendered license. Respondent shall not apply for any license issued by the Board for three years from the effective date of this surrender. If Respondent ever applies for any license issued by the Board, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application is filed, and all of the charges and allegations contained in Accusation No. 905-A shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application.

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Land Surveyor license. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound

by the Decision and Order of the Board for Professional Engineers, Land Surveyors, and Geologists.

DATED: 8/20/12

Original Signed
DAVID ALAN JOLLY
Respondent

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: 8-20-12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

Original Signed
RITA M. LANE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 905-A

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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 ALAN JOLLY** **3890 Vista Campana S, Unit 97** **Oceanside, CA 92057** **Land Surveyor License No. L 7672** Respondent.	Case No. 905-A **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about July 28, 2000, the Board for Professional Engineers and Land Surveyors issued Land Surveyor License Number L 7672 to David Alan Jolly (Respondent). The Land Surveyor License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2010, unless renewed.

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JURISDICTION

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

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license 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.

5. Code section 8780 states, in pertinent part, that

> The Board may receive and investigate complaints against licensed land surveyors and registered civil engineers, and make findings thereon. By majority vote, the Board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor licensed under this chapter whom it finds to be guilty of:
>
> (a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.
>
> (b) Any negligence or incompetence in his or her practice of land surveying.
>
> . . .
>
> (d) Any violation of any provision of this chapter or of any other law relating to or involving the practice of land surveying.
>
> . . .
>
> (g) A breach or violation of a contract to provide land surveying services.

REGULATION

6. California Code of Regulations, title 16, section 476(c)(10) provides in pertinent part:

> A licensee shall not falsely or maliciously injure or attempt to injure the reputation or business of others.

COST RECOVERY

7. 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.

FIRST CAUSE FOR DISCIPLINE

(Negligence and Incompetence)

8. Respondent is subject to disciplinary action under Code section 8780(b) in that Respondent was negligent and incompetent in the practice of land surveying when he failed to adequately research the location of monuments or survey adequately to find additional monuments on the properties located at 630, 640, and 650 Vermont Avenue in Escondido, California (Vermont Avenue project), and for failing to understand the basic surveying principles of establishing a line and in searching for monuments. The circumstances are as follows:

a. In September 2004, Charles R., a licensed Professional Engineer, hired Respondent to perform land surveying services on the Vermont Avenue project. Respondent was to perform the field survey work and a Boundary Survey for the Vermont Avenue project and then Charles R. would use the results to prepare the Parcel Map and Record of Survey for the Vermont Avenue project. Respondent failed to provide a complete survey of the entire block on the Vermont Avenue project and failed to follow Charles R.'s directions in conducting and analyzing the boundary, topography, and street cross sections survey. Respondent also wrote letters to Charles R.'s clients demeaning Charles R.'s qualifications and professional judgment as an engineer.

b. Charles R. used Respondent's boundary establishment in his Record of Survey on the Vermont Avenue project and filed it with the San Diego County Surveyor's Office. Upon review, the San Diego County Surveyor's office requested additional survey points be found or established to justify Respondent's boundary establishment for the Vermont Avenue properties. The County Surveyor's Office found that Respondent showed the monument for Vermont Avenue over half a foot off the right-of-way line, while PM 17117 showed Vermont Avenue on the right-of-way line. The County requested that Respondent tie another record monument per Record of Survey 12591 in order to verify the location of Vermont Avenue. Respondent refused to perform additional survey work that was required to address the County Surveyor's comments. Charles R. hired Chris C., another licensed land surveyor. Chris C. resurveyed the property and

found the County's comments to be correct; the referenced monument was on the right-of-way line of Vermont Avenue, not over a half-foot off the right-of-way line as shown on Respondent's work. Charles R. used Chris C.'s survey to prepare his Parcel Map for the Vermont Avenue project which was eventually recorded with the monument shown on the right-of-way line.

9. Respondent was also negligent in not finding a right-of-way/lot corner monument at the northerly corner of the intersection of Vermont Avenue and Redwood Street that the subsequent land surveyor, Chris C. was able to find.

SECOND CAUSE FOR DISCIPLINE

(Fraud, Deceit or Misrepresentation)

10. Respondent is subject to disciplinary action under Code section 8780(a) in that Respondent committed fraud, deceit or misrepresentation in the practice of professional land surveying as follows:

a. Respondent misrepresented to the Board that he was not hired to perform a Boundary Survey for the Vermont Avenue project. Respondent represented to the Board that he was only to perform preliminary research for a possible parcel map; however documentation, including Respondent's proposal to Charles R., indicates Respondent was hired to perform a boundary survey.

b. After Respondent's refusal to address the County Surveyor's comments regarding the Vermont Avenue project, Respondent wrote a letter dated September 25, 2003 to Charles R.'s client Bob P, wherein Respondent misrepresented that he was not hired to perform a Boundary Survey on the Vermont Avenue project.

THIRD CAUSE FOR DISCIPLINE

(Breach of Contract)

11. Respondent is subject to disciplinary action under Code section 8780(g) in that Respondent breached his contract to provide professional land surveying services in that he failed to prepare a Boundary Survey for the Vermont Avenue project as more specifically alleged above in paragraph 8, and incorporated herein.

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FOURTH CAUSE FOR DISCIPLINE

(Failed to Comply with Provisions of Land Surveyor's Act)

12. Respondent is subject to disciplinary action under Code section 8780(d) in that Respondent violated provisions of this chapter in conjunction with California Code of Regulations, title 16, section 476(c)(10) in that he falsely or maliciously injured or attempted to injure the reputation of another. The circumstances are as follows:

a. After Respondent's refusal to address the County Surveyor's comments regarding the Vermont Avenue project, Respondent wrote a letter dated September 25, 2003 to Bob P., Charles R.'s client on the Vermont Avenue project, and called into question Charles R.'s competence as a land surveyor and made damaging statements that questioned Charles R.'s judgment.

b. On September 25, 2003, Respondent also wrote a letter to Tony R. of RCE, Inc. and copied the letter to Homestead Development, Charles R.'s client. In the letter, Respondent states that he did not certify that the boundary work he performed on the Vermont Avenue property would be acceptable to the County of San Diego under their scrutiny of a record of survey review process. However, Respondent's agreement to perform a Boundary Survey obligates him to accurately establish the property boundaries in question. Respondent's letter implies that Charles R. erred in the preparation of the Record of Survey that he submitted to the County. This is false and damaging to Charles R.'s reputation.

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 License Number L 7672, issued to David Alan Jolly;

2. Ordering David Alan Jolly 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; and

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

DATED: 7/14/10

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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