

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

In the Matter of the Accusation Against:

**WAYNE HAAS
2900 Carol Lane
Modesto, CA 95358
Land Surveyor License No. L 7701**

Respondent.

Case No. 870-A

OAH No. 2010010667

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers and Land Surveyors, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on September 10, 2010.

It is so ORDERED August 11, 2010.

Original Signed

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

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JONATHAN D. COOPER
Deputy Attorney General
4 State Bar No. 141461
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1404
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

11 **WAYNE HAAS**
12 **2900 Carol Lane**
13 **Modesto, CA 95358**
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14 Respondent.

Case No. 870-A

OAH No. 2010010667.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18 **PARTIES**

19 1. David E. Brown (Complainant) is the Executive Officer of the Board for Professional
20 Engineers and Land Surveyors. He brought this action solely in his official capacity and is
21 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
22 by Jonathan D. Cooper, Deputy Attorney General.

23 2. Respondent Wayne Haas (Respondent) is representing himself in this proceeding and
24 has chosen not to exercise his right to be represented by counsel.

25 3. On or about September 8, 2000, the Board for Professional Engineers and Land
26 Surveyors issued Land Surveyor License No. L 7701 to Wayne Haas (Respondent). The Land
27 Surveyor License was in full force and effect at all times relevant to the charges brought in
28

1 Accusation No. 870-A and will expire on December 31, 2010, unless renewed.

2 **JURISDICTION**

3 4. Accusation No. 870-A was filed before the Board for Professional Engineers and
4 Land Surveyors (Board), Department of Consumer Affairs, and is currently pending against
5 Respondent. The Accusation and all other statutorily required documents were properly served
6 on Respondent on December 9, 2009. Respondent timely filed his Notice of Defense contesting
7 the Accusation. First Amended Accusation No. 870-A was filed on June 3, 2010. A copy of First
8 Amended Accusation No. 870-A is attached as exhibit A and incorporated herein by reference.

9 **ADVISEMENT AND WAIVERS**

10 5. Respondent has carefully read, and understands, the charges and allegations in First
11 Amended Accusation No. 870-A. Respondent has also carefully read, and understands the effects
12 of this Stipulated Settlement and Disciplinary Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the right to a
14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
15 his own expense; the right to confront and cross-examine the witnesses against him; the right to
16 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
17 the attendance of witnesses and the production of documents; the right to reconsideration and
18 court review of an adverse decision; and all other rights accorded by the California
19 Administrative Procedure Act and other applicable laws.

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

22 **CULPABILITY**

23 8. Respondent understands and agrees that the charges and allegations in First Amended
24 Accusation No. 870-A, if proven at a hearing, constitute cause for imposing discipline upon his
25 Land Surveyor License.

26 9. For the purpose of resolving the Accusation without the expense and uncertainty of
27 further proceedings, Respondent hereby gives up his right to contest those charges.

28 10. Respondent agrees that his Land Surveyor License is subject to discipline and he

1 agrees to be bound by the Board for Professional Engineers and Land Surveyors (Board)'s
2 imposition of discipline as set forth in the Disciplinary Order below.

3 **CONTINGENCY**

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

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

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

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

26 **DISCIPLINARY ORDER**

27 IT IS HEREBY ORDERED that Land Surveyor License No. L 7701, issued to Respondent
28 Wayne Haas (Respondent), is revoked. However, the revocation is stayed and Respondent is

1 placed on probation for four (4) years on the following terms and conditions.

2 1. **Obey All Laws.** The Respondent shall obey all federal, state, and local laws and
3 regulations related to the practices of professional engineering and land surveying.

4 2. **Submit Reports.** The Respondent shall submit such special reports as the Board may
5 require.

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

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

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

20 6. **Cost Recovery.** Within three and one-half (3 ½) years of the effective date of the
21 decision, the Respondent shall reimburse the Board for its investigative and enforcement costs in
22 this matter in the amount of \$3,254.50. Said reimbursement may be paid in installments. Failure
23 to reimburse the Board's cost of its investigation and prosecution shall constitute a violation of
24 the probation order.

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

28 8. **Ethics Course.** Within three and one-half (3 ½) years of the effective date of the

1 decision, the Respondent shall successfully complete and pass a course in professionalism and
2 ethics for land surveyors, approved in advance by the Board or its designee. The Respondent
3 shall provide the Board with official proof of completion of the requisite course.

4 9. **Land Surveying Courses.** Within three and one-half (3 ½) years of the effective
5 date of the decision, the Respondent shall successfully complete and pass three (3) college-level
6 land surveying courses, related to the areas of violation. Said courses shall be approved in
7 advance by the Board or its designee. The Respondent shall provide the Board with official proof
8 of completion of the requisite courses. For purposes of this condition, "college-level course"
9 means a course offered by a community college or a four-year university of three semester units
10 or the equivalent; it does not include seminars.

11 10. **Notification.** Within thirty (30) days of the effective date of the decision, the
12 Respondent shall provide the Board with evidence that he has provided all persons or entities with
13 whom he has a contractual or employment relationship relating to professional land surveying
14 services with a copy of the decision and order of the Board and shall provide the Board with the
15 name and business address of each person or entity required to be so notified. During the period
16 of probation, the Respondent may be required to provide the same notification to each new person
17 or entity with whom he has a contractual or employment relationship relating to professional land
18 surveying services and shall report to the Board the name and address of each person or entity so
19 notified.

20 **ACCEPTANCE**

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

25
26 DATED: 6-11-2010

Original Signed

WAYNE HAAS
Respondent

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: 6/14/10

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

Original Signed
JONATHAN D. COOPER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 870-A

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JONATHAN D. COOPER
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4 State Bar No. 141461
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
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12 **2900 Carol Lane**
13 **Modesto, CA 95358**

OAH No. 2010010667

FIRST AMENDED ACCUSATION

14 **Land Surveyor License No. L 7701**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about September 8, 2000, the Board for Professional Engineers and Land
22 Surveyors issued Land Surveyor License Number L 7701 to Wayne Haas (Respondent). The
23 Land Surveyor License was in full force and effect at all times relevant to the charges brought
24 herein and will expire on December 31, 2010, unless renewed.

25 **JURISDICTION**

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

STATUTORY PROVISIONS

4. Section 8762 of the Code provides:

(a) Except as provided in subdivision (b), after making a field survey in 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 field survey was made, a record of the survey.

(b) Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil 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:

(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 office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

(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 map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

(3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on 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 map or survey record maintained by the Bureau of Land Management of the United States.

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

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

1 (c) The record of survey required to be filed pursuant to this section shall be filed within 90
2 days after the setting of boundary monuments during the performance of a field survey or within
3 90 days after completion of a field survey, whichever occurs first.

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

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

17 (e) Any record of survey filed with the county surveyor shall, after being examined by him
18 or her, be filed with the county recorder.

19 (f) If the preparer of the record of survey provides a postage-paid, self-addressed envelope
20 or postcard with the filing of the record of survey, the county recorder shall return the postage-
21 paid, self-addressed envelope or postcard to the preparer of the record of survey with the filing
22 data within 10 days of final filing. For the purposes of this subdivision, "filing data" includes the
23 date, the book or volume, and the page at which the record of survey is filed with the county
24 recorder.

25 5. Section **8764** of the Code provides:

26 The record of survey shall show the applicable provisions of the following consistent with
27 the purpose of the survey:

28 (a) All monuments found, set, reset, replaced, or removed, describing their kind, size, and

1 location, and giving other data relating thereto.

2 (b) Bearing or witness monuments, basis of bearings, bearing and length of lines, scale of
3 map, and north arrow.

4 (c) Name and legal designation of the property in which the survey is located, and the date
5 or time period of the survey.

6 (d) The relationship to those portions of adjacent tracts, streets, or senior conveyances
7 which have common lines with the survey.

8 (e) Memorandum of oaths.

9 (f) Statements required by Section 8764.5.

10 (g) Any other data necessary for the intelligent interpretation of the various items and
11 locations of the points, lines, and areas shown, or convenient for the identification of the survey
12 or surveyor, as may be determined by the civil engineer or land surveyor preparing the record of
13 survey.

14 The record of survey shall also show, either graphically or by note, the reason or reasons, if
15 any, why the mandatory filing provisions of paragraphs (1) to (5), inclusive, of subdivision (b) of
16 Section 8762 apply.

17 The record of survey need not consist of a survey of an entire property.

18 6. Section **8764.5** of the Code provides:

19 Statements shall appear on the map as follows:

20 SURVEYOR'S STATEMENT

21 This map correctly represents a survey made by me or under my direction in con- formance
22 with the requirements of the Professional Land Surveyors' Act at the request of

23 _____

24 Name of Person Authorizing Survey

25 in _____, 20____.

26

27 (Signed and sealed) _____

28 L.S. (or R.C.E.) No. _____

1 License expiration date _____

2 COUNTY SURVEYOR'S STATEMENT

3 This map has been examined in accordance with Section 8766 of the Professional Land
4 Surveyors' Act this _____ day of _____, 20__.

5 (Signed and Sealed) _____

6 County Surveyor

7 (L.S. (or R.C.E.) No.) _____

8 (License expiration date) _____

9 RECORDER'S STATEMENT

10 Filed this _____ day of _____, 20__, at __.m. in Book _____ of _____ at
11 page _____, at the request of _____.

12 Signed) _____

13 County Recorder

14 No other statements may appear on the face of the map except those required or authorized
15 by this article.

16 7. Section **8772** of the Code provides:

17 Any monument set by a licensed land surveyor or registered civil engineer to mark or
18 reference a point on a property or land line shall be permanently and visibly marked or tagged
19 with the certificate number of the surveyor or civil engineer setting it, each number to be
20 preceded by the letters "L.S." or "R.C.E.," respectively, as the case may be or, if the monument
21 is set by a public agency, it shall be marked with the name of the agency and the political
22 subdivision it serves.

23 Nothing in this section shall prevent the inclusion of other information on the tag which
24 will assist in the tracing or location of the survey records which relate to the tagged monument.

25 8. Section **8773** of the Code provides:

26 (a) Except as provided in subdivision (b) of Section 8773.4, a person authorized to practice
27 land surveying in this state shall complete, sign, stamp with his or her seal, and file with the
28 county surveyor or engineer of the county where the corners are situated, a written record of

1 corner establishment or restoration to be known as a "corner record" for every corner established
2 by the Survey of the Public Lands of the United States, except "lost corners," as defined by the
3 Manual of Instructions for the Survey of the Public Lands of the United States, and every
4 accessory to such corner which is found, set, reset, or used as control in any survey by such
5 authorized person.

6 (b) After the establishment of a lost corner, as defined by the Manual of Instructions for the
7 Survey of the Public Lands of the United States, a record of survey shall be filed as set forth in
8 Section 8764.

9 (c) Any person authorized to practice land surveying in this state may file such corner
10 record for any property corners, property controlling corners, reference monuments, or
11 accessories to a property corner.

12 9. Section **8773.3** of the Code provides:

13 In every case where a corner record is filed pursuant to Section 8773, the licensed land
14 surveyor or registered civil engineer shall reconstruct or rehabilitate the monument of such
15 corner, and accessories to such corner, so that the same shall be left by him in such physical
16 condition that it remains as permanent a monument as is reasonably possible and so that the same
17 may be reasonably expected to be located with facility at all times in the future.

18 10. Section **8780** of the Code states:

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

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

25 (a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.

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

27 (c) Any fraud or deceit in obtaining his or her license.

28 (d) Any violation of any provision of this chapter or of any other law relating to or

1 involving the practice of land surveying.

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

4 (f) Aiding or abetting any person in the violation of any provision of this chapter.

5 (g) A breach or violation of a contract to provide land surveying services.

6 (h) A violation in the course of the practice of land surveying of a rule or regulation of
7 unprofessional conduct adopted by the board.”

8 **COST RECOVERY/RESTITUTION**

9 11. Code section **125.3** provides that the Board may request the administrative law judge
10 to direct a licensee found to have committed a violation or violations of the licensing act to pay a
11 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

12 12. Section **11519**, subdivision (d), of the Government Code provides that the Board may
13 require restitution of damages suffered as a condition of probation in the event probation is
14 ordered.

15 **FACTUAL SUMMARY**

16 13. On or about 2003, Respondent performed a survey of lots 19 and 20, block 2, San
17 Carlos Manor, San Carlos, California. On or about October, 2003, Respondent filed a Record of
18 Survey based on this project. Respondent failed to comply with the applicable standard of care,
19 as follows:

20 A. Respondent’s Record of Survey failed to show and consider data necessary for
21 the intelligent interpretation of various items and location of points, lines and
22 areas shown.

23 B. Respondent’s Record of Survey failed to indicate whether data shown on the map
24 was of record or was calculated. The survey failed to disclose whether original
25 monuments as delineated on the original subdivision map were searched for or
26 found, and failed to compare original monuments to lines shown on Respondent’s
27 Record of Survey.

28

- 1 C. Respondent's Record of Survey showed a discrepancy with record bearing and
2 shows inconsistent rotation, and did not explain the differences in rotation.
- 3 D. Respondent's Record of Survey failed to show that any existing lines of
4 occupation were located or considered in evaluating the location of property lines.
5 The survey failed to discuss accepted property lines by means of evidence of
6 existing improvements. The survey specifically failed, for instance, to show and
7 consider an existing fence between lots 18 and 19.
- 8 E. Respondent's Record of Survey failed to show sufficient evidence to demonstrate
9 the conclusions arrived at and delineated therein.
- 10 F. Respondent's Record of Survey was not signed by Respondent as required by
11 law.
- 12 G. Respondent's Record of Survey failed to show existing easements.

13 **FIRST CAUSE FOR DISCIPLINE**

14 (Negligence/Incompetence)

15 14. Respondent is subject to disciplinary action under Code section 8780(b) and/or under
16 Code section 8780(d) in that he acted negligently and/or incompetently in the practice of land
17 surveying and violated provisions of this chapter or of any other law relating to or involving the
18 practice of land surveying, as set forth above in paragraph 13 and its subparts.

19 **SECOND CAUSE FOR DISCIPLINE**

20 (Failure to Timely File Record of Survey or Corner Record)

21 15. Respondent is subject to disciplinary action under section 8780(d), 8762(b)(2) and
22 8762(c) in that he failed to file a record of survey within 90 days after having conducted a survey
23 on property and having discovered a material discrepancy with information contained in a
24 subdivision map, official map, or survey record previously recorded or filed in the office of the
25 county recorder. The circumstances are as follows:

26 16. On or about April 22, 2004, Respondent performed a survey of lots 19 and 20, block
27 2, San Carlos Manor, San Carlos, California. On that date, Respondent discovered that a
28 monument described on a previously recorded survey had been destroyed. Respondent set a new

1 monument in place but failed to file a new record of survey or corner record within 90 days
2 thereafter.

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:

- 7 1. Revoking or suspending Land Surveyor License Number L 7701, issued to Wayne
8 Haas;
- 9 2. Ordering Wayne Haas to pay the Board for Professional Engineers and Land
10 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to
11 Business and Professions Code section 125.3;
- 12 3. Taking such other and further action as deemed necessary and proper.

13 DATED: 6/3/10

13 *Original Signed*
14 DAVID E. BROWN
15 Executive Officer
16 Board for Professional Engineers and Land Surveyors
17 Department of Consumer Affairs
18 State of California
19 *Complainant*