

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: |) | |
| |) | |
| ROBERT GILMORE HUNT |) | Case No. 970-A |
| 322 North 18 th Street |) | |
| San Jose, CA 95112 |) | OAH No. 2011080587 |
| |) | |
| Land Surveyor License No. L 7952, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

DECISION

The attached Proposed Decision of the Administrative Law Judge 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 May 24, 2013.

IT IS SO ORDERED April 18, 2013.

Original Signed

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

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS,
AND GEOLOGISTS
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation Against:

ROBERT GILMORE HUNT,

Land Surveyor License No. LS 7952

Respondent.

Case No. 970-A

OAH No. 2011080587

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on January 17-20, March 8-9 and 15-16, and October 8-10, 2012, and January 28 and February 7, 2013, in Oakland, California.

Deputy Attorney General Brett A. Kingsbury represented complainant Joanne Arnold, Interim Executive Officer of the Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs.

Respondent Robert Gilmore Hunt represented himself.

The matter was submitted on February 7, 2013.

FACTUAL FINDINGS

1. On August 21, 2003, the Board for Professional Engineers, Land Surveyors, and Geologists (board) issued Land Surveyor License No. LS 7952 to respondent Robert Gilmore Hunt. The license was in full force and effect at all times relevant to this matter. The license will expire on December 31, 2013, unless renewed.

2. On May 19, 2011, Joanne Arnold, acting in her official capacity as Interim Executive Officer of the board, issued an accusation against respondent. The main focus of the accusation is on two boundary surveys respondent did in San Mateo County in 2007 and 2008. The accusation alleges that respondent committed acts of fraud, deceit or misrepresentation in both surveys, and that he was negligent or incompetent in connection with the 2008 survey. The accusation also alleges that respondent practiced land surveying

as an officer of a corporation without timely filing a notice of association. Respondent filed a notice of defense and this hearing followed.

Background

3. The practice of land surveying, including the process for the submission and review of maps, is closely regulated by the state under the Professional Land Surveyors' Act ("PLS Act" or "Act," Bus. & Prof. Code, § 8700 et seq.), and by the board under regulations it has adopted ("Regulations," Cal. Code Regs., tit. 16, § 400 et seq.).¹

4. The surveys at issue in this case are boundary surveys of parcels of land that had been created in the past. The purpose of such a survey is to reestablish the parcel's original boundaries. The surveyor begins by researching the public record, dating back to the original deed or other document that created the parcel. The surveyor assembles prior surveys of the parcel, and perhaps surveys of adjoining parcels, which are also part of the public record. These documents will provide the surveyor with background on the points, lines and measurements that form the boundaries of the property being surveyed.

In the field, those points are identified by monuments. A monument may be a natural object, like a tree or a rock, or a manmade object, like an iron pipe, a nail, a tack, or a "+" scored in concrete (called a "cut cross"). Monuments are critical to accurately establishing the boundaries of a parcel of land. A surveyor must be able to establish the origins of a monument, to assess its reliability. Thus, a survey must identify, and accurately describe, all monuments found or set. (Act, § 8764; Regulations, § 464.) When a surveyor sets a monument, the surveyor must identify it with his or her license number; this is usually done by affixing a tag, bearing the surveyor's license number, to the monument. (Act, § 8772.) Once set, monuments must be left undisturbed; it is a crime to maliciously remove a monument that has been set. (Penal Code, § 605.)

Research tells the surveyor what points need to be reestablished, and what monuments to look for in the field. The surveyor then goes into the field and attempts to locate the necessary points. Ideally, the surveyor will find the original monuments used to establish the parcel. If the surveyor finds that those monuments are reliable, the surveyor will use them to reestablish the boundaries. If those monuments cannot be found, or are not reliable, the surveyor must go farther afield and identify other documents and monuments that will lead to a sound resolution of the boundary problem. Land surveying is a highly technical, complex profession that requires knowledge of mathematics and geometry, and knowledge of legal principles that govern the interpretation of record documents.

¹ All references to the PLS Act or the Act are to the Business and Professions Code. All references to Regulations are to title 16 of the California Code of Regulations.

5. A surveyor expresses his opinion of a parcel's boundaries on a map. The Act recognizes two types of maps, a record of survey and a corner record. (§§ 8762, 8773.) A corner record is basically an abbreviated record of survey.

The process for filing a record of survey and a corner record is essentially the same. To summarize a detailed process, the surveyor first submits his or her map to the county surveyor for examination. The examination process generally involves more than one submittal, with the first submittal on paper or cardstock, and the final submittal for filing on Mylar film. The county surveyor has 20 working days to examine the map for compliance with the Act. (§§ 8766, 8773.2, subd. (a).) The Act sets forth the focus and parameters of the county surveyor's examination. (§§ 8766, 8733.2, subd. (a).) The county surveyor may not require the surveyor to change his or her methods or procedures, nor can the county surveyor require a field survey to verify the data shown on the survey. (§ 8766, subd. (b).) A survey that complies with the county surveyor's examination must be filed upon the surveyor's request. (§§ 8767, 8773.2, subd. (a).) If, however, the county surveyor finds that the map does not comply with applicable requirements, the county surveyor must return it to the surveyor with a statement of the changes that are necessary to bring the map into compliance. (§§ 8767, 8773.2, subd. (b).) The surveyor may then agree to make the requested changes and resubmit the map for filing. (§§ 8767, 8773.2, subd. (b).) If the surveyor does not agree, the surveyor may resubmit the map and ask that it be filed without further change, but an explanation of the differences between the surveyor and the county surveyor must be noted on the map. (§§ 8768, 8773.2, subd. (c).) The surveyor and the county surveyor must attempt to reach agreement on language that explains their differences. (§§ 8768, 8773.2, subd. (c).) If they cannot agree on language, then both of them must add a note on the map that explains their differences. (§§ 8768, 8773.2, subd. (c).) County surveyors can charge a reasonable fee for the examination. (§§ 8766.5, 8773.2, subd. (e).)

When the examination process is complete, the map is filed with the county recorder (records of survey) or county surveyor (corner records). (Act, §§ 8770, 8773.)

6. Evan Page has over 30 years of experience as a land surveyor. He has been licensed in California since 1996, and has served on board committees that develop and grade the state's license examination. Page testified as an expert at the request of complainant. Gwendolyn Gee testified as an expert witness at respondent's request; she did not charge respondent for her time. Gee has been a licensed land surveyor in California since 1992, and has been the County Surveyor of Santa Clara County since 2004. She has also served on several board committees, including the committees that develop and score the license examination. The testimony of Page and Gee was of material assistance in understanding the technical issues presented by this case.

2007 Corner Record

7. In 2007, respondent was hired to do a boundary survey of a parcel of land in San Mateo County, "Parcel 4," so that the owner could construct a fence.

8. Respondent submitted his corner record to the county surveyor on August 4, 2007 – the first of what ultimately turned out to be five submittals. Respondent’s first submittal was on cardstock. On his map, respondent stated that he had set monuments at three corners of the property, including a monument at the northerly corner of the property that he described as “SET TAG/NAIL.” Respondent did not report the existence of any other monument at the northerly corner. He requested a review of the corner record within 20 working days; respondent wanted the examination done promptly, and declined to give the county surveyor’s office any extra time to complete its review. The file was assigned to Keith Nofield, a licensed land surveyor in the county’s Department of Public Works.

9. Nofield reviewed respondent’s corner record and returned the document to respondent on October 25, 2007, well after the 20-working-day review period had lapsed. In his “first check” of the corner record, Nofield identified numerous items on the corner record that, in his view, needed to be “added, modified or changed to make [the corner record] conform to code and be technically correct.”

Some of Nofield’s proposed changes were within the authority of the county surveyor to demand, but others were not. For example, Nofield asked respondent to tag – with respondent’s own license number – a monument that respondent had found in the field; a surveyor is only required to tag monuments that he or she has set. Other proposed changes appeared to be grammatical. For example, where respondent wrote “FND BRASS TAG & NAIL ‘SMCO’” (found brass tag and nail, San Mateo County), Nofield wrote: “FND BRASS TAG ‘SMCO’ & NAIL.”

At the northerly corner of the property, where respondent’s map noted “SET TAG/NAIL,” Nofield wrote, “In what?,” meaning, “In what was the monument set?” This was a legitimate question, as the medium in which a monument is set can help surveyors identify it in the future.

10. The next day, October 26, respondent replied to Nofield’s letter by sending him back the first check corner record, with his own responses to Nofield’s comments; a second, revised submittal of the corner record; and a cover letter. On the first check, next to Nofield’s question of what the monument at the northerly corner was set in, respondent wrote, “IN CONC.,” meaning, “in concrete.” On his map, respondent described that monument as “SET TAG/NAIL IN CONC.” The second submittal addressed some of the changes Nofield requested, but refused to comply with other requests that respondent felt were beyond Nofield’s authority to impose.

In his cover letter to Nofield, respondent wrote: “Congratulations on your new position with the County. I hope your co-workers will appreciate the experience and expertise that you bring to your position. I am sure the private sector will. Good luck with your new job!” Respondent’s complimentary remarks were meant sarcastically. Respondent had met Nofield before. He did not think that Nofield was an experienced or expert surveyor. Respondent also felt that Nofield was performing a hypercritical review of the corner record because of a personal grudge against respondent. (Nofield denies it.)

Respondent believes that Nofield was angry at respondent because of remarks respondent made at a county land surveyors meeting in June 2007, when respondent had been critical of public surveyors generally, and of a friend of Nofield's in particular.

11. Under a cover letter dated October 31, 2007, Nofield returned respondent's second submittal with additional comments – the second check. As with the first check, some of Nofield's comments were appropriate, but others were unwarranted under the Act. For example, where respondent wrote that he had set an iron pipe with a 3/8" brass tag, Nofield wrote, "Isn't this truly 3/4"?" Nofield directed respondent to identify his "Basis of Bearing," a requirement that does not apply to corner records. Nofield also misinterpreted several code sections that he cited to respondent.

Respondent's representations concerning the removal of monuments

12. In a reply dated November 2, 2007, respondent wrote:

We set three monuments at the property corners of the subject site to facilitate the construction of a new fence. We have since removed said monuments primarily because of your tedious and unnecessary demands on how to prepare a Corner Record. I believe you have exceeded your responsibilities and are abusing your authority for personal reasons. Because the set monuments have been removed the PLS Act is not triggered and because the two previously submitted Corner Records have been rejected, we hereby withdraw our submittal of the Corner Record application. Please return the \$10 filing fee and all materials previously submitted.

At hearing, respondent testified that he asked to withdraw the corner record because he was "as frustrated as could be with five months of arguing back and forth" with Nofield, and with what he felt were Nofield's unjustified demands.

13. In a reply dated November 9, 2007, Nofield challenged respondent regarding the removal of monuments. Nofield told respondent he might have committed a crime by removing them. He informed respondent that a Corner Record was required because he had set monuments, and denied respondent's request for a refund.

14. The next day, November 10, respondent wrote to Brian Lee, the Deputy Director of the Department of Public Works and the County Surveyor. His letter began:

I am being harassed by a member of your staff, Keith Nofield, and wish to file a formal grievance against him if you cannot compel him to stop. We have withdrawn our application for a Corner Record because Mr. Nofield has denied it twice based on things like sentence structure and abbreviations which is not his

responsibility. The County Surveyor is limited to checking for technical correctness and compliance with the PLS Act. I have complied with the code but Mr. Nofield refused to file said Corner Record in violation of State Law. Mr. Nofield is required to cite which section of the code a Corner Record fails to comply with and he has failed to do so. Mr. Nofield is required to review and return comments in 20 days and he has failed to [do] that since we submitted said Corner Record the first week of August. We have removed the two pipes that triggered the State code because the survey was done primarily for construction purposes and there are no land title issues It appears to me Mr. Nofield is trying to impose his own personal style on the preparation of my map and it behooves you to explain to him that he is a map checker not a map maker. His arrogance and overbearing attitude is not acceptable[.] I will not be filing record maps in your County in the future because of his intolerable nature. Mr. Nofield is making a mountain out of a mole hill.

15. Under a cover letter dated November 16, respondent made a third submittal of his corner record “for filing without further changes.” He asked the county to limit its comments to the

“accuracy of mathematical data and substantial compliance” with Section 8773.2 of the PLS Act and cite the appropriate Section(s) of the law you believe the Corner Record fails to comply with. If you have any further objections to the enclosed Corner Record please place your comments in the appropriate section on page 1 and I will include them on the final version as required by said PLS Act.

The third submittal also showed the monument at the northerly corner as a “SET TAG/NAIL IN CONC.”

16. After the third submittal, respondent wrote letters to the county on November 20 and November 21, in which he stated that he had never removed the monuments, but had only removed the tags that had been attached to them. In his November 21 letter, respondent wrote:

I did not remove any monuments marking property corners in violation of Sec. 605 of the Penal Code, but if I had it would only be a violation if I had done so maliciously. I removed some of my tags for a very practical reason for the duration of one week. I anticipated some monuments might be disturbed by some imminent construction of improvements. A subsequent

conversation with . . . my client allayed my concerns. Some clients and/or contractors remove tagged monuments during a construction project and then try to place them back where they think the monuments were originally and this can create a great deal of liability for me. If the monuments remain undisturbed it is [a] simple matter of replacing the tag and nail in the hole left after their removal

17. Respondent's representations to the county that he had removed only the tags from the monuments he had set, not the monuments themselves, were false. Three weeks earlier, respondent told the county that he had removed his monuments because of the county's "tedious demands," had asked to withdraw his corner record, and had requested a refund of his filing fee. Respondent reported that he had removed the tags, rather than the monuments themselves, only after the county informed him that removing the monuments might subject him to criminal liability. Respondent's explanation for removing the tags is not credible: even if respondent anticipated that his set monuments might be disturbed, that does not explain why he would remove his tags, which are inexpensive and easily replaced.

Double monument at the northerly corner

18. Nofield did a physical inspection of the site on November 27, 2007. He found that the monument at the northerly corner, which respondent had described as a nail and tag set in concrete, was a double monument: a nail through a silver metal disc (a "shiner"), and respondent's nail and tag driven through the shiner. Nofield also found that the monuments were set in wood, not concrete. In terms of the boundary of Parcel 4, the difference between the two monuments was insignificant, but multiple monuments at the same site are confusing to subsequent surveyors. In addition, none of respondent's submittals had reported another monument at the point where respondent had set his nail and tag. To insure the perpetuation of monuments, a corner record must accurately describe the physical condition of any monument found or set. (Regulations, § 464, subd. (a).)

19. After reviewing respondent's third submittal, Lee wrote to respondent on December 4, 2007. Lee told respondent that he would file respondent's third submittal if respondent agreed to add the following notes:

San Mateo County Field Books are official records in lieu of records of survey in accordance to Section 8765(a) of the Business and Professions Code.

The monument noted as "SET TAG/NAIL IN CONC." was observed as set on wood board on November 27, 2007 and has a nail/shiner and a nail tag partially covering the first nail/shiner at the same location. It is unclear which nail is the true monument.

20. Respondent sent his fourth submittal to Lee under a cover letter dated December 6, 2007. In that letter, respondent wrote, "I have considered and addressed all your comments and I feel we can come to some agreement now. . . . [¶] I hereby submit the enclosed Corner Record . . . for filing without further changes" On his fourth submittal, at the monument at the northerly corner of the property, respondent wrote "SET TAG/NAIL IN WD. HEADER." Respondent included on his map the first note that Lee requested, but not the second note concerning the double monument. In his cover letter to Lee, respondent wrote, "My descriptive note about the North corner of the subject property was revised so your . . . note was omitted." Respondent did not inform Lee that the double monument itself had been corrected, nor did he attempt to reach agreement with Lee about the second note that Lee had requested. When he made his fourth submittal, respondent did not know whether the double monument had been corrected. In fact, it had not.

21. On December 12, Nofield went to the site and found that the double monument was still there. On December 13, Lee added the following note to respondent's corner record under "County Surveyor's Comments": "The monument noted as 'SET TAG/NAIL IN WD. HEADER' was observed on 12-12-2007 that a nail/shiner and a nail/tag partially covering the first nail/shiner were recently set at the same location."

22. On December 15, respondent fixed the double monument, or caused it to be fixed by his field crew, so that it was a single nail and brass tag. Respondent made a fifth submittal of his corner record under a cover letter dated December 15. In his letter, respondent informed Lee, "[W]e have replaced our two nails & shiners with a single nail & tag on 12/15/07 . . . to remove any question as to the true location of said North corner as requested in your earlier correspondence. We have revised the attached Corner Record."

23. At hearing, respondent testified that the monument at the northerly corner is set in concrete, and that he was required by the county to give a false description of the medium in which the monument was set. Photographs of the site, however, reveal a nail driven into wood. Even if respondent is correct and the wood was a header over concrete, the concrete is not visible and therefore the description "set nail and tag in concrete" would not have enabled future surveyors to locate the monument with facility, as required by section 8773.5 of the Act.

2008 Record of Survey

24. In 2008, respondent was hired to do a boundary survey of a parcel of land in San Mateo County, "Lot 20," that was created in 1908 as part of the Fair Oaks Acres subdivision.

25. Respondent chose to do a record of survey. Respondent made his first of five submittals to the San Mateo County Surveyor on March 29, 2008. Hoping to avoid Nofield, respondent sent the first submittal to an associate engineer in the Department of Public Works. The map, however, was referred to Nofield for review.

Monument at the south corner

26. Respondent's first submittal represented that he had set a monument at each of the four corners of Lot 20, including the south corner. At each corner, the map states "SET 3/4" IP w/TAG LS#7952." "IP" stands for "iron pipe," and "LS#7952" is respondent's license number. At the time he made this submittal, respondent did not know what monument had been set at the south corner.

27. Nofield reviewed respondent's first submittal and, in a letter dated April 24, 2008, identified 19 items that he wanted respondent to address. Among those items was a request that respondent state, in his legend, "the complete character of your point set for the perpetuation of your points . . ."

28. In his second submittal, under a cover letter of June 1, 2008, respondent described the monument at the south corner as "SET NAIL/TAG IN CONCRETE." At the time he made this submittal, respondent did not know what monument had been set at the south corner.

29. Nofield reviewed respondent's second submittal and raised eight issues that still needed to be addressed.

30. Respondent made his third submittal under a cover letter dated June 22, 2008. His third submittal continued to show the monument at the south corner as "SET NAIL/TAG IN CONCRETE." In his cover letter, addressed to County Surveyor Lee, respondent wrote that he was submitting the survey "for final review and filing without further changes pursuant to . . . the PLS Act. . . Please let me know if I may prepare the final Mylar plot." At the time he made this submittal, respondent did not know what monument had been set at the south corner.

31. After respondent made his third submittal, a county crew went to the site and found a cut cross in concrete, with no tag, at the south corner of Lot 20, not the nail/tag in concrete identified on respondent's map. Lee has seen cut crosses before; to Lee, this cut cross appeared to be machined and new. Lee wrote to respondent on July 15, 2008, and advised him of the cut cross at the south corner. On respondent's third submittal, Nofield noted "FD '+' no tag" at the south corner.

32. Respondent made a fourth submittal on Mylar under a cover letter July 16, 2008. In his cover letter, respondent informed Lee that he was resubmitting his map "for filing without further changes." On the map, respondent identified the monument at the south corner as "SET CUT CROSS IN CONCRETE."

33. After receiving respondent's Mylar, Lee wrote back to respondent on July 23, 2008, and addressed (among other things) the cut cross at the south corner:

At the southerly corner of Lot 20 you revised to show "SET CUT CROSS IN CONCRETE". This set monument without any tag is in violation of the Professional Land Surveyors Act^[¶] I prefer we work together to verify your map before it is filed. If you still feel your map may be filed without further changes, . . . I will include the following notes stating my differences:

- 1) This map reflects an excess of 0.53' being allocated to Lots 8 through 19, instead of the excess being prorated throughout the entire block.
- 2) The "SET CUT CROSS IN CONCRETE" shown without tag is not in compliance with Section 8772 of the Professional Land Surveyors Act, Business and Professions Code, State of California.

34. Respondent sent the original of Lee's letter back to Lee, with his Mylar map – his fifth submittal. On Lee's letter, where Lee stated the notes he intended to include on respondent's map, respondent wrote "Do whatever you want, I'm done."

35. Lee added both of his notes to respondent's map under "County Surveyor's Notes" and filed it on August 4, 2008.

36. A week later, as Lee was writing to the board about respondent's conduct and assembling the necessary documents, he noticed that on respondent's fifth submittal, respondent had changed "SET CUT CROSS IN CONCRETE" to "FND. CUT CROSS IN CONCRETE." When respondent had made his fifth submittal and informed Lee, "Do whatever you want, I'm done," Lee assumed that respondent had chosen not to make any changes in his map and therefore had not reviewed the map carefully. Lee filed an amended map to delete his note about the "set" cut cross.²

37. At hearing, respondent testified that his crew chief had set tags on three corners of Lot 20 and was about to set the fourth corner when the crew chief scraped away the debris and found a cut cross. When he drafted his fourth submittal on Mylar, respondent testified, he "incorrectly labeled that point" as "set" instead of "found." Respondent stated that when the county questioned him about the cut cross, he investigated, corrected his note, and sent the map in.

² Respondent contends that Lee and Nofield committed crimes of conspiracy and forgery by amending respondent's signed map, without respondent's permission, to delete the county surveyor's note about a set cut cross. Prior to hearing, respondent left a message on Nofield's voicemail, informing Nofield that he intended to file criminal charges against him, but that he would not do so if Nofield agreed to "drop [his] charges" with the board. (Nofield had not filed a complaint with the board.)

Respondent's testimony that the cut cross was found, not set, is not credible. In his first three submittals to the county, respondent represented that he had set the monument at the south corner. Even when he changed the character of the monument to a cut cross on his fourth submittal, respondent continued to describe the monument as one that was set. Respondent did not change "set" to "found" until Lee announced his intention to include an adverse comment on respondent's map. It is not probable that respondent found a cut cross at the precise location where he had reported, in his previous submittals, that he had set a monument. Lee's testimony about the appearance of the cut cross further supports the conclusion that the monument was set, not found.

Establishment of the northeasterly end of the block.

38. Paragraph 38A of the accusation alleges that respondent "failed to properly establish the northeasterly end for the block containing the property surveyed. Respondent therefore had no basis to distribute errors between record and measured distances along the block, and therefore no appropriate basis to set corner monuments." The accusation alleges that respondent's failure to establish the northeasterly end of the block was negligent or incompetent.

39. When a recent, accurate measurement between established monuments is different from that originally reported between the same monuments, then the excess or deficiency must be distributed in some way. The presumption is that the original measurement was erroneously reported or that the original measurement is not as reliable as that obtained with modern instruments. The issue becomes how that excess or deficiency should be distributed. The general rule with respect to a subdivision, in which all of the lots were created at the same time, is that excess or deficiency should be prorated among all of the lots on the block. An exception is recognized, however, when a block is broken by a street. The theory is that streets must be given their full width, and therefore streets are treated, in effect, as the end of a block. Instead of prorating excess or deficiency among all the lots of the block, it is prorated between the street and the end of the block in which the excess or deficiency was found.

40. Applying these principles to the present case requires a description of the subdivision that Lot 20 is part of, and the relationship of the block in which Lot 20 is situated to the adjoining subdivision of North Fair Oaks.

Lot 20 is part of a larger block of parcels – Block A – of Fair Oaks Acres subdivision. At the southwest end of Block A are Lots 1 and 2; they appear to front onto Middlefield Road, which is roughly perpendicular to Eighth Avenue. At the northeast end of Block A is Lot 38. Lots 3 through 38 all front onto Eighth Avenue. They are all rectangular and they all share the same width of 50 feet, except Lot 22, which is designated on the subdivision map as a "street lot," and is 60 feet wide.

The rear boundary of Lots 3 through 38 is the exterior boundary line of Fair Oaks Acres, a boundary line it shares with Block 7 of North Fair Oaks subdivision, created a year

earlier than Fair Oaks Acres. The parcels in Block 7 of North Fair Oaks front onto Seventh Avenue, which runs parallel to Eighth Avenue; the rear of those parcels adjoins the rear of the parcels in Block A of Fair Oaks Acres. Lots 5 through 76 of Block 7 of North Fair Oaks are all rectangular lots with the same width of 25 feet, except Lot B. In addition to bearing a letter rather than a number, Lot B is 60 feet in width. It is aligned with Park Road, which is also 60 feet in width. It is reasonable to presume that Lot B was intended as a street lot in the event it became desirable to extend Park Avenue.

41. Respondent's review of the record revealed that Lot 22 of Block A of Fair Oaks Acres aligns very closely, if not exactly, with Lot B of Block 7, which is also 60 feet wide. Respondent concluded that it was the intent of the subdivider of Fair Oaks Acres to align Lot 22 with Lot B to allow for the possible extension of Park Avenue.

42. Respondent noted an excess of .53' between his measurements and the record distances between the south corner of Lot 22 and Lot 7. Respondent is, and was at the time of his survey, aware of the general principle that excess and deficiency in a subdivision is prorated across the entire block. It was respondent's belief, however, that because Lot 22 was identified as a street lot, the excess should be distributed between Lots 8 through 19, to protect the intended alignment of Lot 22 in Fair Oaks Acres and Lot B in North Fair Oaks. Respondent distributed the excess accordingly. In respondent's view, it was not necessary to establish the northeasterly end of Block A, which he felt was irrelevant to his solution of how to distribute the excess.

43. In the opinion of complainant's expert, Evan Page, when subdivision maps of North Fair Oaks and Fair Oaks Acres are analyzed carefully, Lot B and Lot 22 do not line up precisely. He would reject, therefore, the proposition that the subdivider of Fair Oaks Acres intended Lot 22 to align with Lot B for street purposes. More fundamentally, Page opined that surveying principles protect the width of streets only when the property is actually used as a street, which Lots B and 22 are not. In Page's view, therefore, Lot 22 should bear excess or deficiency just like any other parcel in Block A.

44. Gwendolyn Gee, who testified at respondent's request, takes a different approach. Based on her reading of the two subdivision maps, and particularly upon the 60 foot dimension of Lot 22 and its express designation as a "street lot," Gee believes that the subdivider of Fair Oaks Acres intended that Lot 22 line up with Lot B of North Fair Oaks for the creation of a future street, implying that the block would be broken there. Under these circumstances, to give effect to the intent of the subdivider, Gee would treat Lot 22 as a future street and give the lot its full width. Gee believes that respondent acted properly when he treated Lot 22 as the end of the block.

45. Both Page and Gee expressed reasonable opinions on how Lot 22 should be treated in an excess/deficiency analysis. Page gives greater weight to the actual use to which the property has been put. He cites to a textbook on surveying to support his opinion, which in turn rests on Michigan case law. Gee gives controlling weight to what she believes to be the intent of the subdivider of Fair Oaks Acres. As the county surveyor of a large county in

the Bay Area, Gee has first-hand knowledge of how land surveyors would commonly address this issue. Under these circumstances, it was not established to the applicable standard of proof that respondent failed to use the care ordinarily exercised by a land surveyor in good standing, when he chose not to establish the northeasterly end of Block A to distribute excess.

46. The evidence does not establish that respondent lacks the knowledge or ability to perform an excess/deficiency analysis.

Establishment of Eighth Avenue

47. Paragraph 38B of the accusation alleges that, in one or more of his submittals, respondent “failed to properly establish the right-of-way upon which [Lot 20] fronted (‘Eighth Avenue’), leaving out an important angle in the road and improperly establishing the intersection of Eighth Avenue with another street (Middlefield Road). Respondent thus had no appropriate basis to determine the boundary at the front of [Lot 20].” The accusation alleges that respondent’s failure to properly establish Eighth Avenue was negligent or incompetent.

48. Page testified that the proper establishment of Eighth Avenue is critical to respondent’s survey, because the Eighth Avenue right-of-way establishes the front boundary of Lot 20. Page noted that on respondent’s first submittal, respondent showed an angle point in Eighth Avenue, but did not identify where that angle point was. In addition, respondent’s first submittal failed to identify monuments in Eighth Avenue which he should have used to control the location of Eighth Avenue. Page testified that in the second submittal, respondent crossed out the bearings that indicated an angle in Eighth Avenue, but still did not note where the angle point was or why the angle was irrelevant to respondent’s resolution, and that respondent still did not identify monuments in Eighth Avenue that he should have used to control Eighth Avenue. In Page’s opinion, respondent failed to use the care ordinarily exercised by a land surveyor in good standing in his first and second submittals. Gee reviewed respondent’s third submittal and opined that it properly established Eighth Avenue, but she did not offer an opinion on whether respondent properly established the street in his first two submittals. Page’s opinion that respondent’s first two submittals fell below the standard of care is persuasive.

49. The evidence does not establish that respondent lacked the knowledge or ability to properly establish Eighth Avenue.

Notice of Association

50. A person who practices land surveying as an officer of a corporation must file with the board a “notice of association” within 30 days of associating with the corporation. (Regulations, § 463, subd. (a).)

51. Respondent practiced land surveying as the President of American Baseline Company, a limited liability corporation, as early as November 20, 2007, but did not file a notice of association with the board until October 21, 2008.

52. Respondent acknowledges that he “overlooked” filing a notice of association for some time. Nevertheless, respondent asserts that the board may not enforce this requirement against him. Respondent testified that, at a continuing education seminar he attended, an employee of the board commented that failing to file a notice of association was a common oversight and that she had forms available at the seminar. Respondent stated that he “jokingly” asked her if he would be sanctioned if he filed it late and that the agency employee told him “No.”

Other Matters

53. Respondent has no history of prior discipline.

54. Before the surveys at issue in this case, respondent had never practiced in San Mateo County. Most of his practice was in Santa Clara County. Gee, who is the county surveyor for Santa Clara County, has known respondent since the late 1990’s. Respondent has submitted almost 60 maps to Gee’s office. Gee has never known respondent to disregard the law, and she has never seen any instances of negligence or incompetence by respondent.

55. In respondent’s opinion, a land surveyor is subject to discipline only for matters shown on his final, filed map, not on earlier submittals. Filing a map, respondent testified, is an “evolving process” in which the county surveyor provides the private surveyor with additional information, references to field books and other surveys, and corrections. Respondent believes that it is not practical to expect the private surveyor to have all the necessary reference materials available to him at the beginning of the process. Providing the surveyor with a careful review and reference materials, respondent contends, is the obligation of the county surveyor, who charges fees for the examination.

Respondent’s opinion extends to representations of factual matters in a surveyor’s early submittals, such as the description of monuments the surveyor has set, and even whether the monuments have been set at all. Respondent testified that it is “common to have a wish list of where we intend to set the monuments.” Typically, respondent stated, the monuments on his submittals that are shown as “set” are not set until the final map is filed; he does not do a thorough “ground search” himself. Respondent testified that his records of survey “represent a process,” and each submittal is a step in that process – that is why his monuments and notes change from submittal to submittal. Respondent states that, in his opinion, this is standard practice for surveyors.

56. Insofar as respondent’s opinions on these matters are offered as a legal defense, the issues are addressed in Legal Conclusion 2a, below.

To the extent respondent is describing what he believes to be the standard of care among surveyors, his testimony is unpersuasive. In Page's opinion, a land surveyor's duty of care applies to every area of practice, including representations in the surveyor's first submission. When a surveyor submits a map to the county surveyor, he or she is saying, "This is my complete survey, subject to your comments." The first submission should be substantially correct and complete, subject only to matters within the statutory authority of the county surveyor. The purpose of the county surveyor's review, Page testified, is to catch minor mistakes. Page's opinion on these matters is persuasive.

Insofar as respondent's testimony is offered as assurance that he would not make misrepresentations on a final map, as opposed to an initial submittal, his testimony is given little weight. Respondent misrepresented the monument at the south corner of Lot 20 as "found" on his final record of survey.

57. Respondent has been without income since the accusation against him was published on the board's website.

Costs

58. Nancy A. Eissler, Enforcement Program Manager for the board, certifies in a statement dated January 18, 2012, that the board has incurred \$2,700 in technical expert costs. This figure is supported by billing statements from Page, which identify the general tasks performed, the time spent on each task, and (by inference) Page's hourly rate.

59. The Deputy Attorney General assigned to this case certifies, in a declaration dated January 13, 2012, that the Department of Justice has billed the board \$13,785 for attorney services through January 12, 2012. The general tasks performed, the time spent on each task and the method of calculating the costs are set forth in an itemized billing statement.

60. In the absence of any evidence or argument to the contrary, the costs identified in Findings 58 and 59 are found to be reasonable.

61. In the same declaration, the Deputy Attorney General estimates that an additional eight hours of attorney time in the amount of \$1,360, "were or will be incurred and billed to the [board] for the further preparation of the case up to the commencement of the hearing." There is no description of the tasks to be undertaken or the time to be spent on the tasks associated with this estimate.

LEGAL CONCLUSIONS

Standard of Proof

1. The standard of proof applied in making the factual findings set forth above is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

Respondent's Motion to Dismiss

2. Respondent moves to dismiss the accusation on numerous grounds.

a. Respondent's most fundamental contention is that a surveyor cannot be disciplined for matters stated on a map submitted for examination, as opposed to a map in final form submitted for filing. He asserts that a map submitted for examination "cannot be considered evidence of fraud, deceit, negligence or incompetence."

Respondent is incorrect. Under the Act, a land surveyor is subject to discipline for misconduct "in his . . . practice of land surveying." (§ 8780, subs. (a), (b) & (h).) The submission of a record of survey or corner record to the county surveyor for examination falls within the Act's definition of the practice of land surveying. Under the Act, a person engages in land surveying if he: "[l]ocates, relocates, establishes, [or] reestablishes . . . any property line or boundary of any parcel of land" (§ 8780, subd. (c)); or if he "[b]y the use of the principles of land surveying determines the position for any monument or reference point which marks a property line, boundary, or corner, or sets, resets, or replaces any such monument or reference point" (§ 8726, subd. (e)); or if he "[d]etermines the information shown or to be shown on any map or document prepared or furnished in connection any one or more of the functions described in subdivisions . . . (c) [and] (e)" (§ 8726, subd. (g).)

Public protection requires that a licensed surveyor meet professional standards in the course of his or her practice, even on a first submittal. Some matters on a map, such as the description of monuments set or observed by the surveyor, require a site visit and are therefore beyond the typical review of a county surveyor. And while the county surveyor's examinations in this case were rigorous, examinations by other county surveyors may not be, resulting in the filing of a map that does not meet professional standards.

For these reasons, respondent's argument that he can be judged only by the content of his final, filed maps is rejected.

b. Respondent contends that the accusation must be dismissed on the ground that complainant Joanne Arnold is not a licensed land surveyor and is "therefore unauthorized and unqualified to *render a statement regarding the accuracy of maps or measured survey data.*" (Original emphasis.) An accusation is not evidence; it is a statement of charges. (Gov. Code, § 11503.) The board has delegated to its executive officer the authority to issue accusations. (Regulations, § 405, subd. (e).)

c. Under “conflict of interest” and “double jeopardy” theories, respondent asserts that he cannot be disciplined by the board for matters pertaining to his corner record or his record of survey because those maps were approved and filed by the San Mateo County Surveyor. Respondent’s argument is not supported by legal authority, and it is not persuasive. For the reasons set forth above, a surveyor must comply with professional standards regardless of the actions of the county surveyor.

d. Respondent asserts that the accusation is barred by “state and federal” statutes of limitations. His argument is not persuasive. General civil and criminal statutes of limitations do not apply to administrative proceedings such as this. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.) If the licensing agency has not enacted a statute of limitations, then it is assumed by the courts that the legislature intended to protect the public “regardless of how long it takes [the licensing agency] to act.” (*Ibid.*) There is no statute of limitations that applies to proceedings before the board.

e. Respondent asserts that the board is precluded from taking disciplinary action against him for failing to timely file a notice of association, because he was informed by an agency employee that no action would be taken against him if he filed the form. To prevail on such a theory, respondent must show (at a minimum) that the agency employee was aware of all the facts, that respondent himself was not, and that he was injured by relying upon what the agency employee told him. (See *Crumpler v. Board of Administration* (1973) 32 Cal.App.3d 567, 581.) The evidence does not support any of these propositions. Complainant is not barred from seeking disciplinary action for respondent’s failure to timely file a notice of association.

f. Respondent asserts, in his motion to dismiss and in his testimony, that Lee and Nofield committed violations of the Act and the criminal law. Respondent believes that it is “discriminatory” for the board to bring a disciplinary action against him, and not against them. Respondent does not cite any legal authority to support his argument, and it is unpersuasive. That complainant has chosen to direct her enforcement efforts against respondent, rather than against others, is not a ground to dismiss the action against respondent.

Respondent’s other grounds to dismiss the accusation concern the merits of the case, which are addressed in the Legal Conclusions below. As it is concluded that there is cause to take disciplinary action respondent’s license, respondent’s motion to dismiss is denied.

First Cause for Discipline (Corner record)

3. The board may take disciplinary action against a licensee “whom it finds to be guilty of . . . [a]ny fraud, deceit, or misrepresentation in his . . . practice of land surveying.” (Act, § 8780, subd. (a).)

The Act does not define the terms fraud, deceit or misrepresentation. In licensing cases such as this, the courts have looked to civil case law for guidance. (*Fort v. Board of*

Medical Quality Assurance (1982) 136 Cal.App.3d 12, 19.) The term “fraud” requires an intent to deceive. (*Lacher v. Superior Court* (1991) 230 Cal.App.3d 1038, 1046-1047.) It is the element of intent that distinguishes fraud from negligent misrepresentation. (*Ibid.*) A negligent misrepresentation is a false representation, made without reasonable grounds for believing it to be true. (*B.L.M. v. Sabo & Deitsch* (1997) 55 Cal.App.4th 823, 842-843.) The term “deceit” includes “the assertion, as a fact, of that which is not true, by one who does not believe it to be true.” (*Lacher v. Superior Court, supra*, 230 Cal.App.3d at 1046.) Under the Act, no showing of actual harm to a consumer, or personal benefit to the licensee, is required. Thus, a licensee who engages in fraud, deceit or misrepresentation may be disciplined even when no one has been harmed, and where the licensee has not benefited from his misconduct. (*Foster v. Board of Medical Quality Assurance* (1991) 227 Cal.App.3d 1606, 1610.)

4. Respondent committed an act of fraud and deceit when he informed the county that he had only removed his tags from the monuments he had set at the corners of Parcel 4, and not the monuments themselves. (Findings 16 & 17.) Cause exists under section 8780, subdivision (a), to take disciplinary action against respondent’s license.

Second Cause for Discipline (Corner record)

5. Section 8780 of the Act states that the board may take disciplinary action against a licensee for violation of the Act or “any other law relating to or involving the practice of land surveying” (subd. (d)), and for violation “in the course of the practice of land surveying of a rule or regulation of unprofessional conduct adopted by the board” (subd. (h)). Subdivision (c)(11) of section 476 of the board’s regulations, which defines unprofessional conduct, states that a licensee “shall not misrepresent data and/or its relative significance in any professional land surveying report.”

6. Respondent misrepresented the monument at the northerly corner of Parcel 4 when he failed to disclose the existence of the double monument, and when he reported that he had set a nail and tag in concrete. (Findings 8, 10, 15, 18 & 23.) Cause exists under section 8780, subdivisions (d) and (h), as those provisions interact with section 476, subdivision (c)(11), of the board’s regulations, to take disciplinary action against respondent’s license.

Third Cause for Discipline (Corner record)

7. Section 476, subdivision (e), of the board’s regulations states that a licensee shall not “misrepresent the completeness of the professional documents he . . . submits to a governmental agency.”

8. Respondent misrepresented the completeness of his corner record when he submitted it to the county surveyor for filing without further changes, without including the note that the county surveyor had requested, and without engaging in the statutorily-required attempt to reach agreement with the county surveyor on a note explaining their differences.

(Finding 20.) Cause exists under section 8780, subdivisions (d) and (h), of the Act, as those provisions interact with section 476, subdivision (c), of the board's regulations, to take disciplinary action against respondent's license.

Fourth Cause for Discipline (Record of survey)

9. Respondent made negligent misrepresentations when he represented that he had set a 3/4" iron pipe monument at the south corner of Lot 20, and when he represented that he had set a nail and tag at that corner. (Findings 26, 28 & 30.) Respondent committed an act of fraud and deceit when he represented, on his final record of survey, that the cut cross at the south corner of Lot 20 was "found." (Findings 36 & 37.) Cause exists under section 8780, subdivision (a), of the Act to take disciplinary action against respondent's license.

Fifth Cause for Discipline (Record of survey)

10. Section 8764, subdivision (a), of the Act provides that a record of survey shall show "[a]ll monuments found, set, reset, replaced or removed, describing their kind, size and location, and giving other data relating thereto." Respondent failed to properly describe the monument at the south corner of Lot 20. (Findings 26, 28, 30, 31, 36 & 37.) Cause exists under section 8780, subdivisions (d) and (h) of the Act, as those provisions interact with section 8764, subdivision (a), of the Act, to take disciplinary action against respondent's license.

Sixth Cause for Discipline (Record of survey)

11. Respondent misrepresented the monuments at the south corner of Lot 20. (Findings 26, 28, 30, 31, 36 & 37.) Cause exists under section 8780, subdivisions (d) and (h) of the Act, as those provisions interact with section 476, subdivision (c)(11), of the board's regulations, to take disciplinary action against respondent's license.

Seventh Cause for Discipline (Record of survey)

12. Section 8780, subdivision (b), of the Act provides that a licensee may be disciplined for any "negligence or incompetence in his . . . practice of land surveying." The term negligence means "the failure . . . to use the care ordinarily exercised in like cases by duly licensed . . . land surveyors in good standing." (Regulations, § 404, subd. (dd).) The term "incompetence" means "the lack of knowledge or ability in discharging professional obligations as a . . . land surveyor." (Regulations, § 404, subd. (u).)

13. On the first two submittals of his record of survey, respondent was negligent in failing to properly establish Eighth Avenue. (Finding 48.) Cause exists to take disciplinary action against respondent's license pursuant to section 8780, subdivision (b), of the Act.

14. The evidence fails to establish that respondent was negligent by failing to establish the northeasterly end of Block A. (Finding 45.) No cause exists to take disciplinary action against respondent's license with respect to this allegation.

15. The evidence fails to establish that respondent was incompetent in connection with establishment of the northeasterly end of Block A, or with the establishment of Eighth Avenue. (Findings 46 & 49.) No cause exists to take disciplinary action against respondent's license on the ground of incompetence.

Eighth Cause for Discipline (Failure to file notice of association)

16. Section 463, subdivision (b), of the board's regulations states, in relevant part, that a licensed land surveyor who practices land surveying "as [an] . . . officer of a . . . corporation shall advise the Board within thirty (30) days of such association . . . on a form approved by the Board." Respondent practiced land surveying as an officer of a corporation for more than 30 days, without timely filing a notice of association. (Finding 51.) Cause exists under section 8780, subdivisions (d) and (h), of the Act, as those provisions interact with section 463, subdivision (b), of the board's regulations, to take disciplinary action against respondent's license.

Disciplinary Considerations

17. Cause for discipline having been established, the issue is the appropriate level of discipline to impose. Under the board's regulations, the minimum discipline is public reproof and the maximum discipline is revocation; the regulations also recognize a stayed revocation, in which the ultimate discipline of revocation is stayed pending the successful completion of a period of probation. (Regulations, § 419.) The purpose of license discipline is to protect the public, not to punish the licensee. (*Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 540.) Protection of the public is the board's highest priority, and is paramount over all other interests. (Act, § 8710.1.)

In assessing the proper level of discipline, the board must consider the nature and severity of the licensee's acts; evidence of any similar acts before or after the acts under consideration; the time that has elapsed since the acts were committed; and any evidence of rehabilitation submitted by the licensee. (Regulations, § 418.)

18. It has now been over five years since respondent's 2007 and 2008 surveys in San Mateo County. Respondent has no record of license discipline before or since. Respondent has a good record as a surveyor in Santa Clara County, where the county surveyor has examined almost 60 of his maps and has found that his work complies with legal requirements. Contrary to the allegations in the accusation, the evidence does not establish that respondent is incompetent. If respondent's failure to properly establish Eighth Avenue, and his failure to timely file a notice of association, were the only matters at issue, they would not justify revocation of his license.

But it is dishonesty in the practice of land surveying that is at the heart of this matter. Honesty is an essential trait for land surveyors. The public must rely on their specialized knowledge and expertise. The opinions of land surveyors affect important interests, and their maps become part of the public record, where they can mislead other surveyors for many years. Respondent made misrepresentations, and committed acts of fraud and deceit, in connection with his maps. Absent a very strong showing of rehabilitation, respondent's continued practice would present an unacceptable risk to the public.

Respondent has not made such a showing. He does not acknowledge any wrongdoing, and does not state that he will conduct himself or his practice differently in the future. Respondent demonstrates little insight into his own conduct, focusing instead on what he perceives to be the misconduct of others. Respondent's unpersuasive testimony that the cut cross at the south corner of Lot 20 was found, not set, raises fresh concerns about his honesty. It is recognized that respondent was frustrated with Nofield's review of his maps and that, to some extent, his frustration was justified. A surveyor, however, cannot control who will examine his maps, or the nature of that examination. Respondent must demonstrate that he can be trusted to truthfully report his findings, even when he is provoked by what he feels is an unwarranted, untimely examination. Respondent has not done that. Respondent states that he believed strict accuracy was required only on his final, filed maps. Even assuming respondent held that belief, it does not allay concerns about his practice, as he falsely stated on his final map for Lot 20 that the cut cross at the south corner was found.

For the reasons stated above, it would be contrary to the public interest to allow respondent to retain his land surveyor's license, even on a probationary basis.

Cost Recovery

19. Business and Professions Code section 125.3 provides that a licentiate found to have violated the licensing laws may be ordered to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

20. An agency that seeks to recover its costs must submit declarations "that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs . . ." (Cal. Code Regs., tit. 1, § 1042, subd. (b).) The evidence establishes that the board has incurred reasonable costs of \$2,700 for expert services and \$13,785 for Attorney General services, for a total of \$16,485. (Findings 58-60.)

21. The cost declaration of the Deputy Attorney General seeks recovery of \$1,360 in "estimated costs." These estimated costs are not supported by a declaration that complies with section 1042. (Finding 61.) The evidence is not sufficient to establish the actual costs incurred or the reasonableness of the costs. These costs are not recoverable under Business and Professions Code section 125.3.

22. Complainant has incurred \$16,485 in actual and reasonable costs in connection with the investigation and enforcement of this matter.

23. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth certain standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

Respondent was successful in challenging the allegations that he was negligent for failing to establish the northeasterly end of Block A, and in defeating allegations that he was incompetent. The board's actual costs in investigating and prosecuting these allegations are not known, but a reasonable estimate is 20 percent of the board's total costs. The board's total cost recovery is reduced by 20 percent, from \$16,485 to \$13,188 ($\$16,485 - \$3,297 = \$13,188$). Respondent does not have the present ability to pay the board's costs. (Finding 57.) The board's recoverable costs are therefore reduced further, by one-half, to \$6,594.

24. The board's recoverable costs of investigation and enforcement are \$6,594.

ORDER

1. Land Surveyor License No. LS 7952, issued to respondent Robert Gilmore Hunt, is revoked.

2. Respondent shall pay to the board its costs of investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$6,594. Nothing in this Order shall prohibit the board from allowing respondent to pay these costs in a payment plan approved by the board.

DATED: March 11, 2013

Original Signed

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

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7
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 Accusation Against:

Case No. 970-A

12 **ROBERT GILMORE HUNT**
13 **2836 Rainview Drive**
San Jose, CA 95133
14 **Land Surveyor License No. L 7952**

A C C U S A T I O N

15 Respondents.

16 Complainant alleges:

17 **PARTIES**

18 1. Joanne Arnold ("Complainant") brings this Accusation solely in her official capacity
19 as the Interim Executive Officer of the Board for Professional Engineers, Land Surveyors, and
20 Geologists, Department of Consumer Affairs.

21 2. On or about August 21, 2003, the Board for Professional Engineers, Land Surveyors,
22 and Geologists ("Board") issued Land Surveyor License Number L 7952 to Robert Gilmore Hunt
23 ("Respondent"). The Land Surveyor License was in full force and effect at all times relevant to
24 the charges brought herein and will expire on December 31, 2011, unless renewed.

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27 ///

1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 **STATUTORY AND REGULATORY AUTHORITY**

5 4. Section 8764 of the Code provides, in pertinent part, that:

6 "[A] record of survey shall show the applicable provisions of the following consistent with
7 the purpose of the survey:

8 "(a) All monuments found, set, reset, replaced, or removed, describing their kind,
9 size, and location, and giving other data relating thereto.

10"

11 5. Section 8780 of the Code states:

12 "The board may receive and investigate complaints against licensed land surveyors and
13 registered civil engineers, and make findings thereon.

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

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

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

20 ". . . .

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

23 ". . . .

24 "(h) A violation in the course of the practice of land surveying of a rule or regulation of
25 unprofessional conduct adopted by the board."

26 6. Title 16, Section 404, California Code of Regulations, provides in pertinent part:

27 "For the purpose of the rules and regulations contained in this chapter, the following terms
28 are defined. . . .

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". . . .

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

". . . .

"(dd) For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, 'negligence' as used in Sections 6775 and 8780 of the Code is defined as the failure of a licensee, in the practice of professional engineering or land surveying, to use the care ordinarily exercised in like cases by duly licensed professional engineers and land surveyors in good standing.

". . . ."

7. Title 16, Part 463(b), California Code of Regulations, provides in pertinent part:

"A licensed land surveyor and/or civil engineer who practices or offers to practice land surveying, according to the provisions of Section 8729 of the Code, as a partner, member, or officer of a partnership, firm, or corporation shall advise the Board within thirty (30) days of such association or termination of association on a form approved by the Board."

8. Title 16, Part 476, California Code of Regulations, provides in pertinent part:

"To protect and safeguard the health, safety, welfare, and property of the public, every person who is licensed by the Board as a professional land surveyor or professional civil engineer 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. A violation of this Code of Professional Conduct in the practice of professional land surveying constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Section 8780 of the Code. . . .

". . . .

"(c) Representations:

". . . .

1 submitted depicted Lot 20 of Block A, Book 6 of Maps, page 12 (6 Maps 12). Various Causes
2 for Discipline below arise from Respondent's conduct and submissions to the County related to
3 this survey (the "Noury Trust Survey").

4 **FIRST CAUSE FOR DISCIPLINE**

5 (Fraud, Deceit, or Misrepresentation in the Practice of Land Surveying (Related to the Corner
6 Survey))

7 13. Respondent is subject to disciplinary action under section 8780(a) of the Code in that
8 he committed misrepresentation and/or deceit in the practice of land surveying in his submissions
9 to the County related to his Corner Survey. Specifically, Respondent committed deceit and/or
10 made misrepresentations regarding (A) his removal of monuments after setting them, and (B) data
11 in the land surveying documents he submitted to the County.

12 **A. Removal of Monuments**

13 14. Respondent made misrepresentations to — and/or engaged in deceit toward
14 — employees of the County with respect to Respondent's removal of monuments he had set
15 during the Corner Survey. Specifically, after a County employee indicated that multiple revisions
16 should be made to Respondent's corner record before it could be filed, Respondent sought to
17 withdraw his corner record on the ground that he had removed all of the monuments he set.
18 Later, after being warned about the potential legal implications of removing a monument and
19 about the necessity of filing a corner record regardless of whether he had removed the
20 monuments, Respondent changed his story, representing that he had not removed monuments
21 after all. More-detailed circumstances are as follows:

22 15. After the County Surveyor Keith Nofield's second return of Respondent's corner
23 record to Respondent for additional corrections and/or clarifications, Respondent indicated in a
24 letter dated November 6, 2007, that he had removed the monuments he set and that a corner
25 record therefore was no longer needed. Respondent asserted he had "removed said monuments
26 primarily because of your tedious and unnecessary demands on how to prepare a Corner Record."
27 Respondent further asserted that because he had removed the monuments, he had no legal
28 obligation to file a corner record; on that basis, Respondent sought to withdraw his submittal and

1 asked for a refund of the filing fee. Respondent gave no indication that any of the relevant
2 monuments — originally placed, according to Respondent, to facilitate the construction of a fence
3 — would be replaced.

4 16. Subsequently, in another letter to the County, Respondent again addressed his
5 removal of the monuments, stating, "We have removed the two pipe[monuments] that triggered
6 the State code because the survey was done primarily for construction purposes and there are no
7 land title issues and because of [County employee] Mr. Nofield's rejection of said Corner
8 Record." Respondent went on to reiterate his request for a refund of the filing fee related to his
9 "withdrawn application."

10 17. County employee Keith Nofield then sent Respondent a letter dated November 9,
11 2007, cautioning Respondent (1) that removing a monument may violate various statutes and (2)
12 that removal of a monument does not avoid or discharge Respondent's duty to file a corner
13 record.

14 18. Respondent then reversed course. Respondent wrote a letter dated November 20,
15 2007, to his client, Brannan Vaughan, as well as to various county employees and others,
16 introducing the idea that Respondent only had removed *tags* — not the actual monuments: "As
17 you know we removed the tags from two pipes for a week because I thought they would be
18 destroyed during the construction phase of your project, but as of Friday November 16th the tags
19 were replaced."

20 19. In another letter to the County dated November 21, 2007, Respondent reiterated this
21 new distinction: "I removed some of my *tags* for a very practical reason for the duration of one
22 week. I anticipated some monuments might be disturbed by some imminent construction"
23 (Emphasis in original). Notwithstanding Respondent's own previous "withdrawal" of his filing
24 application and his various requests for a filing fee refund — all on the basis that Respondent
25 removed the monuments themselves (not merely tags) and therefore had no legal obligation to file
26 a corner record — Respondent espoused this new distinction and asked again for the County to
27 file his revised application.

28 **B. Land Surveying Documents**

1 Note in Respondent's corner record, Respondent submitted a revised corner record for filing
2 without including the note and without otherwise addressing an issue raised by the note. The
3 circumstances are as follows.

4 26. On or around November 27, 2007, the County performed a site visit of the property
5 Respondent surveyed for his Corner Survey. During the site visit, the tag/nail monument on top
6 of the tag/shiner monument (the "Double-Monument"), described above in the Second Cause for
7 Discipline, was observed.

8 27. The County therefore requested Respondent include a County Surveyor's Note
9 regarding the Double-Monument in his final submittal. The requested note was to read, in part,
10 that there is a "nail/shiner and a nail/tag partially covering the first nail/shiner at the same
11 location."

12 28. Respondent thereafter submitted, on December 6, 2007, "for filing without further
13 changes," a revised corner record including a distinct, separately-requested County Surveyor's
14 Note, but excluding any note regarding the Double-Monument. The Double-Monument was still
15 present on the property and had not been altered from its previous state.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 (Fraud, Deceit, or Misrepresentation in the Practice of Land Surveying (Related to the Noury
18 Trust Survey))

19 29. Respondent is subject to disciplinary action under section 8780(a) of the Code in that
20 he committed misrepresentation, deceit, and/or fraud in the practice of landsurveying in his
21 submissions to the County related to the Noury Trust Survey. Specifically, Respondent
22 misrepresented in various submittals to the County the nature of the monument at the southwest
23 corner¹ of the Noury Trust property. The circumstances are as follows:

24 30. In Respondent's first submittal to the County (sent in on or around March 29, 2008),
25 Respondent indicated he had set a 3/4" iron pipe monument with tag at this property corner.

26
27 _____
28 ¹ The referenced corner of the Noury Trust Property borders Eighth Avenue.

1 data in submittals to the County related to the Noury Trust Survey. The circumstances are
2 described above in the Fourth Cause for Discipline.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 (Negligence in the Practice of Land Surveying (Related to the Noury Trust Survey))

5 38. Respondent is subject to disciplinary action under §§ 8780(b) of the Code and Title
6 16, Sections 404(u) & (dd) of California Code of Regulations in that Respondent committed
7 incompetence and/or negligence in the practice of land surveying. Specifically, with respect to
8 the Noury Trust Survey, in one or more submittals to the County:

9 A. Respondent failed to properly establish the northeasterly end for the block
10 containing the property surveyed. Respondent therefore had no basis to distribute
11 errors between record and measured distances along the block, and therefore no
12 appropriate basis to set corner monuments.

13 B. Respondent failed to properly establish the right-of-way upon which the property
14 fronted ("Eighth Avenue"), leaving out an important angle point in the road and
15 improperly establishing the intersection of Eighth Avenue with another street
16 (Middlefield Road). Respondent thus had no appropriate basis to determine the
17 boundary at the front of the property surveyed.

18 **EIGHTH CAUSE FOR DISCIPLINE**

19 (Failure to File Notice of Association)

20 39. Respondent is subject to discipline under Title 16, Part 463(b) of the California Code
21 of Regulations and §§ 8780(d) & (h) of the Code in that Respondent practiced land surveying as a
22 partner, member, or officer of a partnership, firm, or corporation for over thirty days without
23 filing with the Board a Notice of Association. Specifically, Respondent practiced land surveying
24 as President of American Baseline Company as early as November 20, 2007, and never filed a
25 Notice of Association until October of 2008.

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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, Land Surveyors, and Geologists issue a decision:

1. Revoking or suspending Land Surveyor License Number L 7952, issued to Robert Gilmore Hunt;
2. Ordering Robert Gilmore Hunt to pay the Board for Professional Engineers, Land Surveyors, and Geologists 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: 5/19/11

Original Signed
JOANNE ARNOLD
Interim Executive Officer
Board for Professional Engineers, Land Surveyors,
and Geologists
Department of Consumer Affairs State of California
Complainant

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