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

In the Matter of the Accusation and Statement of Issues against:	
MARCUS AARON KINNEE 4765 Henleyville Road Corning, CA 96021	Case No. 830-A OAH No. 2009110185
Land Surveyor-in-Training Certificate No. LST 7040,	Case No. 676-S OAH No. 2009050567
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 matters.

This Decision shall become effective on April 29, 2011.

IT IS SO ORDERED March 24, 2011.

Original Signed

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

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

In the Matter of the Accusation Against: MARCUS AARON KINNEE Corning, California Land Surveyor-in-Training Certificate No. LST 7040 Respondent.	Case No. 830-A OAH No. 2009110185
In the Matter of the Statement of Issues Against: MARCUS AARON KINNEE Corning, California Respondent.	Case No. 676-S OAH No. 2009050567

PROPOSED DECISION

Administrative Law Judge JoAnn Irwin Eshelman, Office of Administrative Hearings (OAH), State of California, heard these consolidated matters in Redding, California on November 15 through 17, 2010.

Elena L. Almanzo, Deputy Attorney General, represented David E. Brown (complainant), Executive Officer of the Board of Professional Engineers, Land Surveyors and Geologists (Board), Department of Consumer Affairs, State of California.

Jeffrey S. Kravitz, Attorney at Law, represented Marcus Aaron Kinnee (respondent) who was present for all three days of hearing.

Oral and documentary evidence was received. Three of respondent's witnesses, Jason E. Abel, Ruvin Grutman, and Jeff Carson appeared by telephone. On the third day of hearing, complainant moved to amend both the Second Amended Accusation and the Second

Amended Statement of Issues. The amendments were granted without objection from respondent.[1] The record was left open for the parties to submit written closing arguments by December 9, 2010, and reply briefs by December 21, 2010. Both parties submitted timely briefs which were marked for identification purposes only as Exhibits 50 and 51, (complainant's post hearing brief and reply brief, respectively), and as Exhibits K and L, (respondent's closing brief and reply brief, respectively). The matter was submitted, and the record closed on December 21, 2010.

SUMMARY

The Board seeks to revoke respondent's current license as a land surveyor-in-training (LSIT) for three reasons: 1) his 15 criminal convictions sustained over 12 years; 2) his omission of information about the convictions from two applications submitted to the Board; and 3) his alleged unlicensed activity in managing two companies performing land surveying services by preparing proposals, "marking [property boundary] corners," and preparing and submitting various maps to clients and a county planning department. The Board also seeks to deny respondent's application for licensure as a professional land surveyor for the three reasons above and for two other reasons related to the nature of the crimes and acts committed.

Respondent focused on the unlicensed activity allegations at hearing, defending his actions as appropriate because they were under the "responsible charge" of two licensed land surveyors connected with respondent's two land surveying businesses, Benchmark Topographics and Compass Consulting, Inc. However, the testimony of the two surveyors showed that respondent repeatedly acted independently without the kind of supervision required if he was under their "responsible charge." The opinions of two land surveying experts confirmed that respondent's actions in managing his two land surveying companies required licensure. Respondent's explanations of his criminal history and subsequent omission of that information from his applications shows that he has not accepted responsibility for that conduct and, thus, has not rehabilitated. For all these reasons, respondent's LSIT must be revoked and his application for licensure as a professional land surveyor must be denied.

FACTUAL FINDINGS

Procedural Matters

1. Accusation. On February 9, 2005, respondent applied to the Board for LSIT certification. On January 20, 2006, the Board granted respondent Certificate Number LST

[1] On November 30, 2010, complainant filed a Third Amended Statement of Issues and Third Amended Accusation reflecting the amendments granted at hearing. This document was marked as Exhibit 49, and admitted into evidence for jurisdictional purposes.

7040 (Certificate). The Certificate did not authorize respondent to practice or offer to practice professional engineering or surveying. It remains valid until the issuance of a professional land surveyor license.

2. On May 3, 2007, the Board received an anonymous complaint alleging that respondent was practicing land surveying without a license through his business in Corning, California called Benchmark Topographics (BT). The Board investigated the allegations and concluded that there were grounds for discipline of respondent's LSIT certificate.

3. On December 16, 2008, Cindi Christenson, then Executive Officer of the Board prepared an Accusation against respondent in her official capacity.[2] The Accusation was filed with OAH on November 5, 2009. It was subsequently amended three times.

4. Statement of Issues. On December 10, 2006, respondent applied for a license as a professional land surveyor. He submitted references from two land surveyors, Charles E. Harris, Sr. and Kenneth G. Skillman III, and two civil engineers, Robert J. Feeney and William Kent Jackson, in support of his application.

5. On April 2, 2007, the Board denied respondent's application for two reasons: 1) his record of five criminal convictions and numerous traffic citations; and 2) his failure to disclose all but one of the convictions on his application, and his failure to disclose any of the convictions on his application for LSIT certification.

6. On April 16, 2007, Steven L. Simas, of Simas, Hutchison & Morris, Ltd. Attorneys and Counselors at Law, submitted an appeal of the license denial on behalf of respondent.

7. On December 16, 2008, Cindi Christenson, then Executive Officer of the Board prepared a Statement of Issues against respondent in her official capacity.[3] The Statement of Issues was filed with OAH on May 11, 2009. It was subsequently amended three times.

8. Matters Consolidated. On November 5, 2009, in response to complainant's request, these matters were consolidated for hearing. Respondent did not object to the consolidation.

9. On November 16, 2009, complainant's request for change of venue to Redding, California was granted without objection from respondent.

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[2] Neither the initial Accusation nor the Statement of Issues was received in evidence. Therefore, the administrative law judge takes official notice of all information concerning these two documents from the OAH file.

[3] See footnote 2.

10. On April 26, 2010, Mr. Simas withdrew as counsel. On the same date, Mr. Kravitz notified OAH that he was representing respondent in these matters.

11. These consolidated matters were continued three times, twice at the request of respondent's counsel and once at the request of complainant, before the hearing proceeded on November 15, 2010.

Respondent's Criminal Convictions[4]

12. Commercial Burglary. On May 20, 1992, in the Superior Court of California, County of Tehama, respondent was convicted, upon his plea of guilty, of violating Penal Code section 459, Second Degree Commercial Burglary, a misdemeanor. On June 17, 1992, the court suspended imposition of sentence and placed respondent on formal probation for two years on condition that he serve 30 days in county jail, pay restitution to the victim, and pay a fine of $270.

13. In subsequent proceedings, respondent appeared in court on May 18, 1993 on a petition for revocation of probation based on his violation of Vehicle Code section 14601.1, subdivision (a), Driving with a Suspended Driver's License, on December 8, 1992. Respondent admitted the violation of probation and probation was reinstated on the same terms and conditions.

14. No crime report was received concerning this offense. According to court documents, respondent committed the crime on April 8, 1992, in Pritchett's Market in Corning, California.

15. Driving with a Suspended License. On April 5, 1993, in the Superior Court of California, County of Tehama, respondent was convicted, upon his plea of guilty, of violating Vehicle Code section 14601.1, subdivision (a), Driving with a Suspended License, a misdemeanor.[5] The court ordered respondent to pay a fine of $864 by March 1, 1994. Respondent failed to timely pay the fine and the court issued a bench warrant for his arrest in August 1994. Three months later the warrant was recalled.

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[4] Respondent objected to several of the convictions alleged by complainant on grounds that they were infractions which could not be used for license revocation under Penal Code section 19.8. Complainant conceded this point, but argued in his post hearing brief that the infractions could be considered as factors in aggravation. Only those traffic offenses which were charged in the traffic citation as misdemeanors and resulted in misdemeanor convictions are considered here as grounds for license revocation. Any infractions will be considered as factors in aggravation.

[5] This offense was charged in the traffic citation as a misdemeanor. There was no evidence that the offense was reduced to an infraction under Penal Code section 17, subdivision (d), in conjunction with Penal Code section 19.8.

16. Respondent committed this offense on December 9, 1992, when he was observed by a California Highway Patrol (CHP) officer driving near Highway 99 in Corning, California. The reason his driver's license was suspended is unknown.

17. Driving with a Suspended License. On March 28, 1994, in the Superior Court of California, County of Tehama, respondent was convicted, upon his plea of guilty, of violating Vehicle Code section 14601.1, subdivision (a), Driving with a Suspended License, a misdemeanor.[6] The court ordered respondent to pay a fine of $489 by November 11, 1994. Respondent failed to pay the fine timely and the court issued a bench warrant for his arrest in December 1994. Three months later the warrant was served.

18. Respondent committed the offense of driving with a suspended license on February 4, 1994, when he was observed by a CHP officer driving over the speed limit on Road 99 near Corning, California.

19. Failure to Pay Fine.[7] On April 8, 1994, in the Superior Court of California, County of Tehama, respondent was convicted, upon his plea of guilty, of violating Vehicle Code section 40508, subdivision (b), Failure to Pay Fine, a misdemeanor. The court modified respondent's original sentence for the March 28, 1994 conviction (Finding 17) by adding the fine of $218, for a total fine of $707, due in full by September 1, 1996. Respondent subsequently failed to pay this fine and a bench warrant was issued on October 23, 1996. The warrant was served on March 17, 1997.

20. Failure to Pay Fine. On March 18, 1997, in the Superior Court of California, County of Tehama, respondent was convicted, upon his plea of guilty, of violating Vehicle Code section 40508, subdivision (b), Failure to Pay Fine, a misdemeanor. The court modified respondent's previous sentence and ordered him to pay a fine of $187 or serve one day in county jail for each $50 of unpaid fines from the prior case. Although the court record is not entirely clear, the total fines of $736 were apparently converted to jail time, and a fine of $189 was paid.

21. Unlawful to Drive Unless Licensed. On November 16, 1994, in the Superior Court of California, County of Tehama, respondent was convicted, upon his plea of guilty, of violating Vehicle Code section 12500, subdivision (a), Unlawful to Drive Unless Licensed, a misdemeanor. The court ordered respondent to pay a fine of $270 or have the fine reduced to $130 with proof of license by February 16, 1995. Respondent failed to timely pay the fine

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[6] This offense was charged in the traffic citation as a misdemeanor. There was no evidence that the offense was reduced to an infraction under Penal Code section 17, subdivision (d), in conjunction with Penal Code section 19.8. Respondent also pled guilty to an infraction and was sentenced for both offenses. The infraction will be considered as a factor in aggravation.

[7] Both Vehicle Code sections 40508, subdivision (b), and 40000.25 provide that this offense is a misdemeanor.

and the court issued a bench warrant for his arrest in August 1995. The warrant was served in March 1996. In subsequent proceedings on April 8, 1996, the court modified respondent's sentence by increasing the fine to $528. Respondent paid the fine in full.

22. Respondent committed the unlicensed driving offense on September 19, 1994, when he was observed by a CHP officer driving on Main Street in Red Bluff, California.

23. Driving with a Suspended License. On October 21, 1997, in the Superior Court of California, County of Tehama, respondent was convicted, upon his plea of guilty, of violating Vehicle Code section 14601.1, subdivision (a), Driving with a Suspended License, a misdemeanor.[8] The court ordered respondent to pay a fine of $403 by January 1, 1998. In subsequent proceedings, the court extended the payment date three times. On October 13, 1998, the court converted the fine to work program time at a rate of one day for every $50. Respondent completed the work program in January 1999.

24. Respondent committed the offense of driving with a suspended license on April 30, 1997. He was observed by a CHP officer driving on Solano Street at Highway 99 west near Corning, California, with only his parking lights illuminated.

25. Battery. On September 1, 1998, in the Superior Court of California, County of Tehama, respondent was convicted, upon his plea of nolo contendere (no contest), of violating Penal Code section 242, Battery, a misdemeanor. The court sentenced respondent to serve 30 days in county jail, with 30 days suspended for 12 months, to have no contact with the victim, and to not own or possess a firearm within the next 10 years. Two months later, the court modified respondent's sentence by "lifting the restraining order."

26. No crime report was received concerning this offense. According to court documents, respondent committed the battery on November 22, 1997. The victim was Christie Dawn Story.

27. Petty Theft of Lost Property. On September 1, 1998, in the Superior Court of California, County of Tehama, respondent was convicted, upon his plea of nolo contendere (no contest), of violating Penal Code section 485, Petty Theft of Lost Property, a misdemeanor. The court sentenced respondent to serve 30 days in county jail, with 30 days suspended for 12 months, on condition that he make restitution of $119.03 within the next 12 months, and obey all laws. Respondent failed to make restitution as ordered within the 12-month timeline set by the court.

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[8] There was no evidence that this misdemeanor offense was reduced to an infraction under Penal Code section 17, subdivision (d), in conjunction with Penal Code section 19.8. Respondent also pled guilty to an infraction and was sentenced for both offenses. The infraction will be considered as a factor in aggravation.

28. No crime report was received concerning this offense. According to court documents, respondent committed the theft of lost property on March 14, 1998, when he found checks or money orders belonging to the victim, John Puckett, and did not return them.

29. Failure to Pay Fine. On October 31, 2001, in the Superior Court of California, County of Tehama, respondent was convicted, upon his plea of guilty, of violating Vehicle Code section 40508, subdivision (b), Failure to Pay Fine, a misdemeanor. The court ordered respondent to pay an outstanding fine of $701 forthwith, and converted the remaining $1,000 fine to work program time.

30. Respondent committed the failure to pay fine offense after he was fined $1,483 in a 1998 case in which he pled guilty to two traffic infractions. In 1999, the court modified respondent's sentence by converting his fine to work program time. Respondent did not complete the work program timely and still owed $701 on the fine. The court issued a bench warrant for his arrest on September 28, 2000. The warrant was recalled on September 29, 2001.

31. Fraudulent Use of Another's Access Card. On December 1, 1998, in the Superior Court of California, County of Tehama, respondent was convicted, upon his plea of guilty, of violating Penal Code section 484f, subdivision (b), Fraudulent Use of Another's Access Card, a felony. On January 4, 1999, the court sentenced respondent to serve two years in state prison, but suspended execution of the sentence for three years and placed him on probation. The court ordered respondent to serve 60 days in county jail. In March 1999, respondent submitted proof of completion of a drug treatment program.

32. In subsequent proceedings on December 31, 2001, respondent appeared in court on a petition to violate his probation. The petition was subsequently dismissed on January 14, 2002. On February 26, 2007, the court dismissed the matter and released respondent from all penalties and disabilities, pursuant to Penal Code section 1203.4.

33. No crime report was received concerning the access card offense. The victim of the offense was Thomas M. Wulfert, a licensed land surveyor, who owned a surveying company known as Wulfert & Co. at the time of the offense on October 21, 1998. Mr. Wulfert testified at hearing about the offense. He employed respondent from August through October 1998, as a part-time survey party chief. Because of that role, respondent knew where the key to the survey truck and the office were kept. Respondent also knew that Mr. Wulfert was out of town the weekend of October 16 through 19, 1998.

On Monday, October 20, 1998, respondent admitted to office staff that he had done "something bad" over the weekend. Mr. Wulfert spoke with respondent the next day. Respondent admitted that he had gotten Mr. Wulfert's ATM card from the locked office and purchased a meal and stayed in a hotel over the weekend. Respondent initially denied, but later admitted that he had also attempted to get cash advances of $200 and $600 using Mr. Wulfert's card. Mr. Wulfert eventually discovered that numerous other items were stolen from the office, including computer software and hardware, slide rules, computer "mice," a drafting machine, a global positioning system (GPS), and 20 years-worth of digital

coordinant files, a critical item for survey work. With police assistance, Mr. Wulfert recovered many of the stolen items, worth approximately $18,500, from respondent. Mr. Wulfert estimated the value of the coordinant files at $300,000 to $400,000.

34. At hearing, respondent acknowledged that he committed the crime. He felt remorseful when it happened and wanted to "pay back" Mr. Wulfert. Respondent explained that this was a low point in his life when he was "coming to terms with things that happened" when he was younger.

35. Violation of Promise to Appear.[9] On January 24, 2000, in the Superior Court of California, County of Tehama, respondent was convicted, upon his plea of guilty, of violating Vehicle Code section 40508, subdivision (a), Violation of Promise to Appear, a misdemeanor. The court ordered respondent to attend the work program and pay a fine of $763 for two infraction convictions which were part of his plea.

36. Failure to Pay Fine. On February 26, 2002, in the Superior Court of California, County of Tehama, respondent was convicted, upon his plea of guilty, of violating Vehicle Code section 40508, subdivision (b), Failure to Pay Fine, a misdemeanor. The court ordered respondent to pay the outstanding fine of $763 from the January 24, 2000, case, and vacated the previous work order. In subsequent proceedings, the court modified respondent's sentence to allow him additional time to pay the fine.

37. Violation of Promise to Appear.[10] On January 24, 2000, in the Superior Court of California, County of Tehama, respondent was convicted, upon his plea of guilty, of violating Vehicle Code section 40508, subdivision (a), Violation of Promise to Appear, a misdemeanor. The court ordered respondent to attend the work program and pay a fine of $331 for an infraction conviction which was part of his plea.

38. Furnishing Alcohol to a Minor. On April 27, 2004, in the Superior Court of California, County of Tehama, respondent was convicted, upon his plea of nolo contendere (no contest), of violating Business and Professions Code section 25658, subdivision (a), Furnishing Alcohol to a Minor, a misdemeanor. The court placed respondent on summary probation for 24 months, suspended 10 days in county jail on condition that respondent successfully complete probation, and ordered him to pay a fine of $675 by November 1, 2004.

39. No crime report was received concerning this offense. At hearing, respondent explained that the furnishing offense occurred while he was at his girlfriend's house. His girlfriend's daughter had friends over and the boys who were visiting had alcohol. One of the boys told police that respondent had given him Smirnoff Ice. Respondent was not paying attention because it was not his house. He denied any wrongdoing, but acknowledged that he

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[9] This was court case number STD065231 and citation number 7730 / 7727.

[10] This was court case number STD066016 and citation number 8544.

had some responsibility because he was an adult in the house. Respondent wanted the matter done, so he entered a plea in court on his attorney's advice.

40. Respondent's Testimony about Convictions. At hearing, respondent admitted that his various traffic offenses showed a "lack of responsibility." They occurred during a difficult period of his life that he tries to forget. Respondent is not currently on probation and has paid all his fines and completed all prior probation conditions. He has a driver's license and his car is fully insured. Respondent believes he has learned from his crimes as he stopped "hanging out with those people" a decade ago. He has also completed therapy to deal with a childhood issue of molest involving a family member, but still has some issues with what he experienced. Respondent stated that he "does not want to commit crimes."

41. Summary. Respondent has 15 criminal convictions, which include 14 misdemeanors and one felony. He has three theft or theft-related offenses (burglary, theft of lost property, and fraudulent use of another's access card), one offense involving violence (battery), and one offense of furnishing alcohol to a minor. His remaining misdemeanor convictions are for various vehicle code violations relating to his driver's license (four convictions), failure to pay fines (four convictions) and violation of his promise to appear in court (two convictions). Respondent's criminal record spans 12 years from 1992 through 2004, and reflects a profound lack of respect for the law, the courts, court orders, and probation.

Factors in Aggravation and Mitigation

42. In aggravation, between 1994 and 2000, respondent was convicted in the Tehama County Superior Court of 12 infractions involving traffic offenses: 1) four convictions for driving a vehicle with expired registration (Vehicle Code section 4000, subdivision (a).); 2) four convictions for no proof of financial responsibility (Vehicle Code section 16028, subdivision (a).); 3) one conviction for speeding (Vehicle Code section 22349); 4) one conviction for driving with only parking lights illuminated (Vehicle Code section 24800); 5) one conviction for licensed driver out of classification (Vehicle Code section 12500, subdivision (b).); and 6) one conviction for passing a school bus with flashing signals (Vehicle Code section 22454, subdivision (a).).

43. In aggravation, respondent violated a position of trust as an employee of Wulfert & Co. when he committed the crime of fraudulent use of another's access card.

44. In mitigation, in the fraudulent use of another's access card crime, respondent admitted to the office staff and his employer, Mr. Wulfert, some of his criminal conduct within a day or so of when it occurred in October 1998.

False Statements/Omissions on Applications

45. LSIT Application. Respondent's February 2005 application for LSIT certification includes question number 1.G. which states, "Have you ever been convicted of a crime substantially related to the practice of land surveying?" Respondent checked the box marked "No" in response to this question.

46. At the bottom of the LSIT application is a certification clause which states, "I certify under penalty of perjury under the laws of the State of California that the information on this application is true and correct to the best of my knowledge." Respondent signed the application, certifying that his response to question number 1.G. was true and correct.

47. At hearing, respondent explained that he did not disclose any of his convictions on the LSIT application because he thought the convictions had to be for a land surveying crime. He found question number 1.G. to be "very confusing."

48. Question number 1.G. would be difficult for a layperson to understand because it uses legal terminology in referring to a crime "substantially related to the practice of land surveying." The question appears to seek information about a limited group of crimes related to the practice of land surveying, but does not indicate what "substantially related" means. Because the question is vague, it was not unreasonable for respondent to conclude that most of his 15 convictions need not be disclosed since they involved traffic and other matters apparently unrelated to land surveying. However, respondent's 1998 conviction for fraudulent use of another's access card was directly related to his land surveying work. It would surely come to mind given the wording of question number 1.G. and should have been disclosed. If respondent was confused about whether to disclose that crime, it was his responsibility to contact the Board for clarification. Because respondent did not disclose the 1998 conviction, he knowingly misrepresented his criminal history on his application.

49. Professional Land Surveyor License Application. Respondent's December 2006 application for a license as a professional land surveyor includes question number 9 which states,

> Have you ever been convicted of a criminal offense, including any misdemeanor, or entered a plea of nolo contendere other than for a minor traffic offense? Convictions dismissed under Penal Code section 1203.4 must be disclosed. *If YES, explain fully under remarks on page 2.* (Italics in original.)

Respondent checked the box marked "YES" in response to this question. In the "REMARKS" section, respondent provided the following information about his conviction(s).

> In Regards to Section 9 Page 1, In 1997 I was convicted of felony use of another debt access card. In the past 9 years I have stayed clear and out of trouble. I have since Changed and

turned my life around 360 degrees. I feel that I am a very capable, responsible and Ethical Candidate for this test. My hard work and References will prove that I will serve the community and the surveying profession in the Highest Regard.

50. At the bottom of the license application is a certification clause which states,

> I CERTIFY UNDER PENALTY OF PERJURY AS PROVIDED BY SECTION 2015.5 OF THE CODE OF CIVIL PROCEDURE AND UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE INFORMATION ON THIS APPLICATION AS WELL AS ANY OTHER DOCUMENTS SUBMITTED IN SUPPORT OF THIS APPLICATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. ... (Smaller font side and capitalization in original.)

Respondent signed the application, certifying that his response to question number 9, and his explanation in the REMARKS section were both true and correct.

51. At hearing, respondent explained that he put only the "worst" conviction on his license application because the whole packet of convictions would be submitted to the Board later. He thought that noting just one conviction was "sufficient." He did not have a recollection of all the actual charges and did not want to guess. Respondent claimed that he had already ordered the court documents at the time he completed his application in December 2006. He hand delivered copies of all his convictions and supplemental documents to the Board.

52. Respondent's explanation for his lack of disclosure is disingenuous and not credible. In the explanation he provided in the "REMARKS" section of the license application, respondent claimed to be "clear and out of trouble" after the 1997 [1998] conviction. This was an inaccurate representation of his record. Respondent had four convictions after 1998, two violations of his promise to appear, one failure to pay fine, and one furnishing alcohol to a minor. His justification at hearing for failing to disclose all his convictions was not persuasive. Respondent knew that he had an extensive record of criminal offenses. In failing to disclose the extent of that record, he knowingly misrepresented his criminal history on his application.

Unlicensed Activity

53. The Board does not issue licenses, registrations, or certificates to businesses offering professional engineering or land surveying services. The Board issues licenses to individuals to practice land surveying. Respondent has not been issued a license to practice as a professional engineer or as a professional land surveyor.

54. Benchmark Topographic. Sometime in 2004, respondent formed a company called Benchmark Topographic (BT) to provide "practical land surveying solutions" to businesses and individuals. The business was based in respondent's home in Corning, California. The phone numbers listed on the BT business card were for the home and

cellular phones belonging to respondent. Respondent did not advertise because he generally got business through his contacts in the land surveying field.

55. At the time respondent established BT in 2004, he was working as a party chief for a land surveying company called the Engineering Group (EG), where he had met Robert J. Feeney, a civil engineer and land surveyor. Mr. Feeney was winding down his work at EG and was not intending to continue his practice when he left. He and respondent began working together sometime in late 2004 or early 2005. Mr. Feeney never worked at respondent's home, where BT was based. He considered BT to be owned solely by respondent. In a declaration signed March 14, 2008, respondent admitted that he was the sole proprietor of BT. At hearing, he denied this earlier statement.

56. Mr. Feeney and respondent initially had only a verbal agreement about their working relationship. They agreed to "trade work" and did not intend to pay each other. Nevertheless, Mr. Feeney was paid "some" by BT in 2005 and 2006, but received no pay after that. Mr. Feeney "assumed" he would be the licensed land surveyor for BT. He intended to work with respondent on a project-by-project basis. He understood his role was to be involved "in the scope of work and proposals," but things did not work out that way because he was often contacted about a project "only when something went wrong." Between 2005 and 2008, Mr. Feeney saw respondent approximately two or three times per month to discuss items he needed to review before submittal. He knew respondent was soliciting work, but respondent often did not inform him about the work obtained until after the fact.

57. Respondent claimed that he was in "constant communication" with Mr. Feeney by phone on a daily basis. Respondent sent out proposals for work that he did not discuss with Mr. Feeney ahead of time. Respondent stated that both he and Mr. Feeney brought work and projects to BT. Respondent believes Mr. Feeney knew he was generating proposals, and always knew about proposals and maps ahead of time. In his closing brief, respondent argued that he worked as a subordinate of Mr. Feeney and was under his "responsible charge" as that term is defined in statute and regulations.

58. As a result of the Board investigation, in late January 2008 respondent requested that Mr. Feeney sign a written partnership agreement. The written agreement included a backdated start date for the partnership of December 19, 2004. Mr. Feeney signed the agreement with the intent "to clean up the paperwork." There was no date on the written agreement to indicate when it was actually signed by respondent and Mr. Feeney. Notwithstanding the text of the written agreement, from the testimony and other evidence, it is clear that a formal, legal partnership between Mr. Feeney and respondent was not formed until sometime after January 2008. The partnership was dissolved a few months later in early May 2008.

59. Marking Corners. Between 2004and 2007, real estate broker Vern Wilson frequently contacted respondent through BT to "mark corners" on properties that he had sold. Mr. Wilson gave respondent the address and parcel number. Respondent then found the property, and placed a flag at the location of already existing metal stakes or monuments to

locate the corners. Respondent did not actually place the permanent stake or monument himself. After the work was done and verified by Mr. Wilson, BT was paid from the property's escrow account at Northern California Title Company. Mr. Wilson used respondent and BT because the cost was usually $270. This was significantly less than the cost of $500 to hire a land surveyor to do the job. Mr. Wilson was clear that he would not attempt to flag the corners himself because he would be in danger of losing his license. He relied on the expertise of respondent to find the corners and thus the property lines for buyers.

60. Between March 2007 and March 2008, BT received eight checks from Northern California Title Company for "property corner markings," totaling $2,220. Six of the checks were issued for $270 each and two for $300 each. In July 2009, Northern California Title Company issued a check directly to respondent for $920 for "field survey fees" for a property on Marek Road in Los Molinos, California.

61. Mr. Feeney and respondent did not discuss that respondent was marking corners through BT in real estate transactions. Mr. Feeney did not become aware of this work until after respondent completed it. He was also not aware that respondent was receiving checks from Northern California Title Company for marking corners. Mr. Feeney did not supervise respondent in this activity.

62. There was conflicting testimony from the two land surveyor experts as to whether marking corners requires a license. Richard Moore, the Board's expert, is of the opinion that a licensed land surveyor must mark corners himself or supervise the activity. This is because marking corners involves locating property boundaries or "recovering" prior corners that were already set. Ruvin Grutman, respondent's expert, disagreed and believes that "anyone" can place a flag to mark a corner. He considered it "ridiculous" to require that the person setting the corner be a licensed land surveyor.

63. It seems doubtful that the law allows "anyone" to flag a corner, and thereby identify a property line. Real estate agents and brokers who work with properties on a daily basis are unwilling to set a flag to mark an existing corner. This is because liability follows the individual who, in effect, offers an opinion of the location of the property line by marking or resetting a corner. For these reasons, the testimony of Mr. Moore was more persuasive than that of respondent's expert.

64. Tentative Subdivision Maps for Abel Development Inc. Between February 2006 and February 2007, respondent prepared and submitted three tentative subdivision maps to Tehama County Planning Department (Planning Dept.) for Abel Development Incorporated (Abel). On February 29, 2006, he submitted a map for North Fork Estates which was received by the Planning Dept. on March 1, 2006. On June 21, 2006, he submitted a map for Lincoln Meadows Estates which was received by the Planning Dept. on July 12, 2006. On January 5, 2007, he submitted a map for River View Estates which was received by the Planning Dept. on January 19, 2007.

65. Each of the three maps contained a block indicating that the surveyor was Robert J. Feeney, R.C.E. 22972, and listing his business address as Benchmark Topographic. Each map contained Mr. Feeney's professional civil engineer stamp or seal[11] and what appeared to be his signature. At hearing, respondent admitted that he signed Mr. Feeney's name across each of the three stamps. He claimed that Mr. Feeney authorized him to sign the maps and submit them to the Planning Dept. Mr. Feeney denied giving respondent permission to use his stamp or to sign the maps on his behalf.

The law does not permit a licensed land surveyor to delegate the responsibility to stamp and sign a map to any other person. (See Bus. & Prof. Code §8761, sudiv. (e).) Both experts agreed that the professional stamp or seal on a map could not be signed by an unlicensed person for any reason. Mr. Feeney was in the process of winding down his business and concluding his career. It makes no sense that he would open himself to liability and possible disciplinary action at that point in his work life by allowing respondent to stamp and sign maps on his behalf. For these reasons, respondent's testimony that he had Mr. Feeney's permission to stamp and sign the three maps is not credible.

66. Mr. Feeney was not aware of the North Fork Estates and River View Estates maps until he received them from respondent's first attorney, Mr. Simas, about 18 months before the hearing. Mr. Feeney was not aware of the Lincoln Meadows Estates map until he was asked to do an improvement plan in 2008. Respondent claimed that Mr. Feeney was involved in each of these three projects before the maps were prepared, and that he reviewed the maps before they were submitted.

67. Gary Antone, Director of Public Works for the County of Tehama and the County Engineer and Surveyor, was aware of the three tentative maps prepared by respondent. He met with respondent, Abel, and another individual involved in the North Forks Estates development because the county had concerns about the project. Mr. Antone never met with Mr. Feeney or had contact with anyone from BT other than respondent concerning these three projects.

68. There was no evidence to corroborate respondent's claim that Mr. Feeney reviewed the three maps before they were submitted. All of the evidence suggests that respondent prepared the maps, discussed one of the maps with the county, and submitted all three without significant involvement from Mr. Feeney. Respondent used Mr. Feeney's stamp and signed his name on the maps illegally. (See Finding 65.) He would have no reason to do so if Mr. Feeney had been involved in the projects and had reviewed the maps

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[11] The stamp or seal is included on maps to identify the responsible licensed professional and that the map reflects his/her professional opinion. The stamp can be computer-generated and can be reproduced if the individual knows what the stamp looks like. The evidence indicated that the stamp on the Lincoln Meadows Estates and on the River View Estates maps were each computer-generated. This meant that these two stamps could have been created and placed on the maps by respondent without Mr. Feeney's knowledge.

as he claims. Respondent's testimony about Mr. Feeney's involvement in the submission of the three tentative subdivision maps is not credible.

69. In spring 2006, Abel received invoices from BT for preparation of the three tentative subdivision maps. On March 14, 2006, BT billed Abel $4,300 for re-drawing and re-configuring a map for North Fork Estates and for a field topographic survey for the map. On April 15, 2006, BT billed Abel $4,920 for research and maps, field boundary and topographic surveying, and preparation of tentative subdivision drawings and calculations for River View Estates. On April 21, 2006, BT billed Abel $3,500 for a topographic field survey and tentative map preparation for Lincoln Meadows Estates.

70. Mitten Ranch Estates/Marcy Brothers Boundary Survey. In August 2006, respondent (through BT) completed a Boundary Resolution Calculation Sheet (Sheet) for two lots in Oroville, California. Respondent noted on the Sheet that he completed the survey and drew the map. The Sheet contained no reference to Mr. Feeney. Mr. Feeney became aware of the project in spring 2008 when he was contacted by the owner to do further work. Mr. Feeney was not aware of the boundary survey previously done by respondent, and did not supervise him at the time it was being prepared in 2006. Mr. Feeney prepared a tentative subdivision map for the owner and relied on respondent's previous work in completing that map.

At hearing, respondent acknowledged that he surveyed the land for the boundary resolution. The map which he drew was not submitted to the Marcy Brothers but was prepared for Mr. Feeney to do a lot line adjustment and tentative subdivision map. Respondent stated that Mr. Feeney knew about this project. Even if this is true, there was no evidence that Mr. Feeney was aware of the project before respondent began work or that he supervised respondent in any way.

71. BT was paid for work on the Mitten Ranch Estates sometime between August 2006 and April 2008. BT received $1,200 for "off site and road boundary," and $9,500 for "Topographic for on (sic) both parcels."

72. California Family Foods. In October 2007, respondent (through BT) prepared a "Proposal and Cost Estimate for Topographic Surveying Services on the Arbuckle, Calif California Family Foods Plant." Respondent proposed to prepare a "Detailed Site Topographic Mapping for Site Plan Design" at a cost not to exceed $8,500. There was no reference to Mr. Feeney, and his name did not appear anywhere in the two-page proposal. Respondent's name and LSIT number were at the bottom of the proposal, which was on BT letterhead.

73. Respondent subsequently completed a topographic survey for California Family Foods and prepared a four-sheet survey document. Neither respondent's nor Mr. Feeney's name was on the survey document. Respondent noted on the survey that it was prepared by BT. A topographic survey shows the physical features of a site, including property lines, roads, and utilities. According to Mr. Moore, the Board's expert, field work is usually necessary to complete a topographic survey and to show the existing physical

features. Temporary or permanent points are used for measurements. In Mr. Moore's opinion, the completion of a topographic survey requires a land surveyor's license in California. It is unclear from the evidence whether respondent's expert, Mr. Grutman, agreed with this conclusion.

74. Mr. Feeney was not aware of either the proposal or the topographic survey before they were completed by respondent. Mr. Feeney first became aware of this project when he was contacted by the owner of California Family Foods in the spring of 2008 to do civil engineering work. Mr. Feeney did not supervise respondent in the preparation of the topographic survey.

75. On April 4, 2008, BT was paid $8,500 by California Family Foods for the topographical survey completed by respondent.

76. Conclusions regarding BT. From the testimony of respondent and Mr. Feeney, it is clear that their working arrangements with each other were vague, ill-defined and apparently not well-communicated. Mr. Feeney thought he was in a supervisory role as the licensed land surveyor for BT. However, his report of his interactions and relationship with respondent indicates that he had limited knowledge of respondent's activities through BT. Mr. Feeney frequently did not know about proposals or maps until after they were submitted. This testimony conflicted with respondent's claim that he was in constant contact with Mr. Feeney and that Mr. Feeney always knew about proposals beforehand. Mr. Feeney's testimony on this point was more credible than that of respondent as Mr. Feeney was in the best position to explain what he knew and when he knew it. Mr. Feeney and respondent worked together more as equals, than as supervisor and subordinate.

77. The series of activities described above indicate that Benchmark Topographics was a company engaged in land surveying. Respondent managed or was the sole proprietor of BT while the above noted land surveying business was solicited or performed.

78. Compass Consulting, Inc. Sometime after respondent terminated BT in May 2008, he started a new home-based business called Compass Consulting, Inc. (Compass). The phone number for Compass was respondent's home phone number. All calls went directly to him. Company letterhead describes Compass as a business performing "Development Engineering and Surveying."

79. Respondent asked Charles L. Evans, a licensed land surveyor, to form Compass with him. Mr. Evans agreed. Respondent filed Articles of Incorporation for Compass in December 2009, listing three directors, himself, his wife and Mr. Evans. No corporate officers were identified. In April 2010, Mr. Evans filed an "Organization Record" with the Board, indicating that the business provided the professional services of land surveying under his "responsible charge." Mr. Evans testified at hearing. He has been licensed by the Board as a land surveyor for 40 years, and has been practicing through Compass for the past two years. Mr. Evans has an office at his home, but uses the Compass address of respondent's home, as necessary.

80. Mr. Grutman, respondent's expert, offered his opinion as to the meaning of the term "responsible charge," which appears in statute and regulation. He used the example of a field crew member working under the responsible charge of a licensed land surveyor. The crew member would do the actual field work and report to the surveyor, giving him/her any field notes. The surveyor would check the work in the office, relying on field notes and other information to determine whether the job was done accurately so that he/she could "sign the drawing."

The Land Surveyors' Act defines "responsible charge of work" as,

> the independent control and direction, by the use of initiative, skill and independent judgment, of the observations, measurements, and descriptions involved in land surveying work. The phrase does not refer to the concept of financial liability. (Bus. & Prof. Code § 8703.)

81. Dean Lundie Proposal. Dean Lundie contacted respondent about a well easement issue. On February 11, 2010, respondent (through Compass) submitted a "Professional Services Proposal for a Record of Survey" to Mr. Lundie. Respondent proposed to do "Well Easement and Verification Surveying" and "Record of Survey – Mapping" for a total estimated cost of $6,997.50. The proposal included a statement in bold type at the bottom of the first page indicating that Mr. Evans, a licensed professional land surveyor, was principal of Compass. The statement included Mr. Evans' license number. Respondent signed the three-page document as president of Compass. Mr. Evans did not sign or initial the document. Mr. Lundie signed his acceptance of the terms and conditions of the proposal on February 11, 2010.

82. According to Mr. Evans, he and respondent discussed the Lundie project and decided that a Record of Survey[12] should be done. Respondent then prepared the proposal for Mr. Lundie. Mr. Evans thought he had seen the proposal before it was submitted, but, at hearing, noticed that neither his initials nor his signature was on the document, per his usual procedure. He concluded that he "might not have seen this before" it was submitted.

83. Mr. Moore, the Board's expert, offered the opinion that the Lundie proposal, if a contract, should have been signed by Mr. Evans, the licensee. According to Mr. Moore, submitting a contract that was signed by an unlicensed individual constitutes unlicensed practice. Mr. Grutman, respondent's expert, differed slightly in his opinion about the signing of contracts. He opined that the signer should be an officer of the corporation, and the contract should indicate who is performing the work with a phrase such as, "under the authority of licensed land surveyor (name), license number (number)." Mr. Grutman believes that if the contract has this information, the signer is acting as a subordinate and has authority to sign.

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[12] A Record of Survey is a map to document and serve as a record of boundary evidence, according to Mr. Moore, the Board's expert.

84. The Dean Lundie proposal involved an agreement of two parties, Mr. Lundie and respondent (for Compass), for professional land surveying services to be provided by Compass and paid for by Mr. Lundie. The agreement constitutes a contract between these parties. Although the contract contains reference to Mr. Evans as "principal" of Compass, it does not specify who will be performing the various services and whether those services will be supervised or performed by Mr. Evans. Thus, the contract is evidence of unlicensed practice by respondent, according to the opinions of both experts.

85. Record of Survey map number one. Sometime in February 2010, respondent completed a Record of Survey map for Dean Lundie (Lundie map) using a computer-aided drafting program. Before the survey, respondent and Mr. Evans discussed whether to set the rebars [a type of survey monument], and agreed that they would be set after the map was submitted. Nevertheless, on the Sheet Legend, respondent noted "set 5/8" rebar mrkd L.S. 3709," indicating that corners were set at various locations on the map where the symbol was placed. The map contained Mr. Evans' professional stamp without his signature. The stamp was included under his direction but he purposely did not sign the map as it was being submitted initially "for checking" by the Planning Dept. The map was submitted to the Planning Dept. on March 16, 2010, after it was approved by Mr. Evans.

86. At hearing, Mr. Evans stated that the 5/8" rebars were not set on the first field trip, as indicated by the map. He explained that the rebars would be set after the map was approved by the Planning Dept. and recorded. He felt that this was permissible because, in his opinion, the law allows 30 to 60 days after the map is recorded for the corners to be set.

87. According to Mr. Moore, the Board's expert, the expectation would be that items listed in the Sheet Legend would be completed when the survey map was submitted to the county planning department. The law does not allow a map to show where a monument is proposed to be set rather than where it is actually set. The map should have been stamped and signed but marked as a "draft" or as "preliminary." Respondent's expert, Mr. Grutman, agreed that a government entity would not expect to receive a map containing information in the Legend which had not been done. He stated that submitting the map without the signature of the licensed land surveyor is "not a common practice."

88. Mr. Evans admission that he knowingly allowed an inaccurate map, including his stamp and name, to be submitted to the Planning Dept. seriously undermines his credibility. Both experts found this "inaccuracy" to be outside expected practice, and Mr. Moore described it as illegal. The "inaccuracy" is, in truth, a dishonest and misleading act, regardless of any intention to change the map after it is recorded. As such, it raises questions about whether Mr. Evans has cut corners in other areas of his practice as well, and about the remainder of his testimony. It is also troubling that respondent participated in this decision but apparently had no concerns about it.

89. Respondent's Letters to Planning Dept. After respondent submitted the Lundie map, there was a delay in the Planning Department's checking of the map. Respondent wrote two letters in April 2010 to Tim Wood, Senior Civil Engineer with Tehama County Public Works, heatedly complaining about the delay and advising Mr. Wood

that he was in violation of the Land Surveyors' Act. Mr. Evans was unaware of the letters before they were sent. He saw them for the first time on the day of hearing.

90. Record of Survey map number two. After the first Lundie map was checked by the Planning Dept., respondent prepared and submitted a corrected map around May 21, 2010. Mr. Lundie paid Compass for the completed work on an unknown date.

91. Knife River Construction Proposal. The Knife River Construction proposal was prepared by respondent on September 23, 2010, for a project in Chico, California. Through Compass, respondent proposed to provide professional services for construction staking, including construction surveying, for a cost not to exceed $9,880. Respondent signed the proposal as President of Compass. There is no mention in the proposal of Mr. Evans. Mr. Evans was shown this proposal at hearing. After a long pause, he stated that he did not remember seeing the proposal previously. He thought that respondent had "probably" shown him the document but could not remember it.

92. Conclusions regarding Compass. Between 2008 and June 2010, Compass operated in a manner quite similar to that of BT. Respondent established the company in his home with business communications going to his phone number and address. Respondent secured a retired or semi-retired land surveyor, Mr. Evans, to work with him in the business. Mr. Evans believed he was in a supervisory relationship with respondent. However, Mr. Evans was not aware of or "did not remember" the Knife River Construction proposal, and apparently did not see the Lundie proposal before it was submitted. Mr. Evans did review the Lundie map before it was submitted to the Planning Dept. He allowed and/or directed respondent to prepare the map with inaccurate information about the rebars. Mr. Evans was not aware of the complaint letters respondent sent to the Planning Dept. in April 2010, before they were sent.

93. In preparing the two proposals and the two Lundie maps, Compass Consulting, Inc. was a company engaged in land surveying between 2008 and September 2010. Mr. Evans was a director of the corporation, and had some involvement in the ongoing activities of the company. However, respondent managed or was proprietor of Compass while the above noted land surveying business was solicited or performed.

Rehabilitation

94. California Code of Regulations, title 16, section 418, provides seven criteria which the Board must consider in evaluating the rehabilitation of a land surveyor-in-training or an applicant for licensure. The criteria and evidence of each are reviewed below.

95. *(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation [or denial].*

Respondent was convicted of 15 crimes over 12 years from 1992 through 2004. He knowingly misrepresented this criminal history on both his LSIT application and his application for licensure as a land surveyor. He has prepared proposals, marked corners,

submitted maps and generally functioned as a land surveyor without a license while operating two companies involved in the business of land surveying from 2004 through September 2010. Although individually these crimes and acts are not that severe, this overall history is severe. It clearly shows that respondent has little respect for either the law or the rules governing land surveying.

96. *(2) Evidence of any act(s) committed prior to or subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation [or denial] which could also be considered as grounds for denial under Section 490 [or 480] of the Code.*

There is no evidence that respondent has committed additional crimes since 2004 or that he has misrepresented his criminal history on other applications. Respondent did commit acts of unlicensed activity after the Board initiated these two disciplinary actions in 2008. These subsequent acts were added to the charging documents by amendment at hearing.

97. *(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).*

Nearly seven years have elapsed since respondent was convicted of his last crime in April 2004. Respondent's misrepresentation of his criminal history occurred in 2005 and 2006. Some acts of unlicensed activity have occurred within the past year.

98. *(4) The extent to which the licensee [or applicant] has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee [or applicant].*

Respondent repeatedly failed to comply with his terms of court probation in virtually every one of his criminal cases occurring between 1992 and 2004.

99. *(5) Any evidence of rehabilitation submitted by the licensee [or applicant].*

Respondent submitted very little evidence of rehabilitation. In his own testimony, he offered explanations for his criminal conduct, but did not persuasively show that he has accepted responsibility for his actions.

100. *(6) Total criminal record.*

Respondent's has 14 misdemeanors and one felony on his criminal record.

101. *(7) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.*

Respondent's felony conviction for fraudulent use of another's access card was expunged in February 2007. There was no evidence that any of his other convictions have been expunged.

Cost Recovery

102. The Board certified that the actual costs of investigation and enforcement of the disciplinary matter seeking to revoke respondent's land surveyor-in-training certificate were $36,919.75. Investigative costs between 2007 and 2010 were $16,180.75 for 57.75 hours of investigation, 20.50 hours of travel and 12.5 hours of report preparation. Enforcement costs between 2007 and 2010 were $20,739 for 74.25 hours of attorney services by the Office of the Attorney General. The reasonableness of such costs is discussed below in the Legal Conclusions.

103. At hearing, complainant's counsel advised that the Board is seeking reimbursement for one-half of its actual costs. That amount is $18,459.87.

104. Respondent presented no evidence concerning his current income and financial obligations which might affect his ability to pay the costs.

LEGAL CONCLUSIONS

Burden of Proof and Standard of Proof

1. In an action seeking to impose discipline against the holder of a professional license [or a certificate, as here], the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 957.) However, in a case where an applicant has been denied a license, the burden is on the applicant to show, by a preponderance of the evidence, that he is fit for licensure.

Accusation: Respondent's LSIT Certificate

2. Criminal Convictions. Under Business and Professions Code section 8780.1, subdivision (a), [13] the Board may revoke the certificate of an LSIT, "[w]ho has been convicted of a crime as defined in subdivision (a) of section 480." The crime must be substantially related to the qualifications, functions or duties of the business or profession for which the license [or certificate] was issued. (Bus. & Prof. Code § 490, subdiv. (a).) Under California Code of Regulations, title 16, section 416, a crime is substantially related if,

> ... to a substantial degree, it evidences present or potential unfitness of a professional engineer or land surveyor to perform the functions authorized by his or her license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

[13] All further statutory references are to the Business and Professions Code unless otherwise noted.

[¶]

(b) For land surveyors, any violations of the provisions of the Professional Land Surveyors' Act or aiding and abetting any person in such a violation;

(c) A conviction of a crime arising from or in connection with the practice of professional engineering or land surveying.

3. Respondent was convicted of 14 misdemeanors and one felony between 1992 and 2004 (Finding 41). Considering the number of crimes committed, the nature of the crimes and the 12 years of criminal activity, it is clear that respondent lacks respect for the law, the courts, court orders and probation (Finding 41). As a land surveyor-in-training, respondent has an ongoing responsibility to know and follow the laws. Therefore, under California Code of Regulations, title 16, section 416, all 15 crimes are substantially related to the profession of land surveying because they show that respondent has a present unfitness to perform the functions authorized by his certificate in a manner consistent with the public health, safety, or welfare.

4. The factors in aggravation outweigh the factors in mitigation (Findings 42 through 44).

5. Cause exists to discipline respondent's LSIT certificate, pursuant to section 8780.1, subdivision (a), as set forth in Legal Conclusions 2 through 4.

6. False Statements/Omissions on Applications. Under section 8780.1, subdivision (c), the Board may discipline the certificate of an LSIT, "[w]ho has been found guilty of any fraud, deceit, or misrepresentation in obtaining his or her land surveyor-in-training certificate or license as a professional land surveyor."[14]

7. Respondent misrepresented his criminal history on his application for an LSIT certificate by failing to disclose his 1998 conviction for fraudulent use of another's access card (Findings 45 through 48). As a result of this misrepresentation, respondent was able to obtain his LSIT certificate (Finding 1). Respondent misrepresented his criminal history on his application for licensure as a professional land surveyor by failing to disclose 14 of his 15 criminal convictions (Findings 49 through 52).

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[14] The phrase "found guilty" is not entirely clear and suggests that a criminal conviction for the fraud, deceit or misrepresentation described, is necessary to find a violation of this section. Respondent did not challenge this language, and there is no known authority which requires a criminal conviction to establish the violation and ground for discipline. Therefore, the administrative law judge finds the language to be inartfully drafted and considers respondent's acts as sufficient to prove a violation.

8. Cause exists to discipline respondent's LSIT certificate, pursuant to section 8780.1, subdivision (c), as set forth in Legal Conclusions 6 and 7.

9. Unlicensed Activity. Under section 8780.1, subdivision (f), the Board may discipline the certificate of an LSIT, "[w]ho commits any act described in Section 8792." Section 8792 provides, in pertinent part, that,

> Every person is guilty of a misdemeanor:
>
> (a) Who, unless he or she is exempt from licensing under this chapter, practices or offers to practice, land surveying in this state without legal authorization.
>
> [¶] ... [¶]
>
> (i) Who, unless appropriately licensed, manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced, except as authorized pursuant to Section 6731.2 and subdivision (d) of Section 8729.[15]
>
> [¶]

10. Subordinate and "Responsible charge." Section 8730 lists those persons who are exempt from licensure. Subdivision (a)(2) provides that a "subordinate" to a licensed land surveyor or registered civil engineer is exempt from licensure "insofar as he or she acts as a subordinate." An individual is acting as a subordinate if he is under "responsible charge" of a licensed land surveyor. Section 8703 defines "responsible charge of work" as:

> the independent control and direction, by the use of initiative, skill, and independent judgment, of the observations, measurements, and descriptions involved in land surveying work. The phrase does not refer to the concept of financial liability.

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[15] Section 6731.2 allows a registered civil engineer to practice land surveying work which is "incidental to his or her civil engineering practice." Subdivision (d) of section 8729 provides, "A person not licensed under this chapter or licensed as a civil engineer in this state prior to 1982 may also be a partner or an officer of a land surveying business if the conditions of subdivision (a) are satisfied. Nothing in this section shall be construed to permit a person who is not licensed under this chapter or licensed as a civil engineer in this state prior to 1982 to be the sole owner or office[r] of a land surveying business, unless otherwise exempt under this chapter."

11. In California Code of Regulations, title 16, section 404.2, the term "responsible charge" is further defined. The key portion of this regulation which applies here is in subdivision (3)(b). That subdivision requires that the licensed land surveyor demonstrate that he is in "responsible charge," by showing that he "... made, or reviewed and approved, [decisions] ... and possessed sufficient knowledge of the project to make, or review and approve, them." The pertinent parts of section 404.2 are set forth below.

> (a) The term "responsible charge" directly relates to the extent of control a licensed land surveyor or civil engineer legally authorized to practice land surveying (hereinafter referred to as "legally authorized civil engineer") is required to maintain while exercising independent control and direction of land surveying work or services and the land surveying decisions which can be made only by a licensed land surveyor or legally authorized civil engineer.
>
> (1) Extent of Control. The extent of control necessary to be in responsible charge shall be such that the land surveyor or legally authorized civil engineer:
>
> (A) Makes or review and approves the land surveying decisions defined and described in subdivision (a)(2) below.
>
> (B) In making or reviewing and approving the land surveying decisions, determines the applicability of survey criteria and technical recommendations provided by others before incorporating such criteria or recommendations.
>
> (2) Land Surveying Decisions. The term "responsible charge" relates to land surveying decisions within the purview of the Professional Land Surveyors' Act.
>
> Land surveying decisions which must be made by and are the responsibility of the land surveyor or legally authorized civil engineer in responsible charge are those decisions concerning permanent or temporary work which could create a hazard to life, health, property, or public welfare, and may include, but are not limited to:
>
> (A) Selecting the methods, procedures, and tolerances of field work.
>
> (B) Determining calculation and adjustment methods.
> (C) Determining and specifying the information to be shown on maps or documents furnished in connection with land surveying

services, including the format of the information and the format of the maps or documents.

(D) The decisions related to the preparation of maps, plats, land surveying reports, descriptions, and other land surveying documents furnished in connection with the land surveying services.

(E) Reviewing the sufficiency and accuracy of the work product.

(3) Reviewing and Approving Land Surveying Decisions. In making or reviewing and approving land surveying decisions, the land surveyor or legally authorized civil engineer shall be physically present or shall review and approve through the use of communication devices the land surveying decisions prior to their implementation.

(b) Responsible Charge Criteria. In order to evaluate whether a person authorized to practice land surveying is in responsible charge, the following must be considered: The land surveyor or legally authorized civil engineer who signs surveying documents must be capable of answering questions asked by licensees of the Board who are fully competent and proficient by education and experience in the field or fields of professional land surveying relevant to the project. These questions would be relevant to the decisions made during the individual's participation in the project, and in sufficient detail to leave little question as to the land surveyor's or legally authorized civil engineer's technical knowledge of the work performed. **It is not necessary to defend decisions as in an adversarial situation, but only to demonstrate that the individual in responsible charge made, or reviewed and approved, them and possessed sufficient knowledge of the project to make, or review and approve, them.**

Examples of questions to be answered by the land surveyor or legally authorized civil engineer could relate to criteria for measurement, surveying methods, analysis, and conclusions made including, but not limited to, the retracement of government surveys, interpretation and construction of deed descriptions, conflicts between construction drawings and actual conditions, determination of the proper control datum and epoch, application of proportion methods, and analysis of evidence related to written and unwritten property rights. The individual shall be able to clearly express the extent of control

and how it is exercised and to demonstrate that the land surveyor or legally authorized civil engineer is answerable within said extent of control.

[¶] ... [¶] (Bold type added.)

12. In his land surveying activities through BT (Findings 53 through 77), respondent was not acting under "responsible charge" of Mr. Feeney, as that term is described in California Code of Regulations, title 16, section 404.2. Because he was not under Mr. Feeney's "responsible charge," he was not acting as Mr. Feeney's subordinate. Therefore, respondent is not exempt from licensure requirements under section 8730 for his land surveying activities through BT from 2004 through 2008.

13. Likewise, in his land surveying activities under Compass (Findings 78 through 93), respondent was not acting under "responsible charge" of Mr. Evans, as that term is described in California Code of Regulations, title 16, section 404.2, except perhaps in his preparation of the Dean Lundie map (Finding 85). Because he was not under Mr. Evan's "responsible charge" for most of his work, he was not acting as Mr. Evan's subordinate. Therefore, respondent is not exempt from licensure requirements under section 8730 for his land surveying activities through Compass from 2008 through 2010.

14. From 2004 through 2008, respondent was the manager or sole proprietor of Benchmark Topographics, a company engaged in land surveying (Finding 77). In that role, he engaged in land surveying activities without a license by: 1) marking corners (Findings 59 through 63); 2) preparing tentative subdivision maps for Abel Development, Inc. (Findings 64 through 69); 3) preparing the Mitten Ranch Estates/Marcy Brothers boundary survey (Findings 70 and 71); and 4) preparing a proposal for California Family Foods (Findings 72 through 75). Respondent's conduct in these actions violated section 8780.1, subdivision (f), in conjunction with section 8792, subdivision (a) and (i) (Findings 76 and 77).

15. From 2008 through September 2010, respondent was the manager or proprietor of Compass Consulting, Inc., a company engaged in land surveying (Finding 92). In that role, he engaged in land surveying activities without a license by submitting the Dean Lundie proposal (Findings 81 through 84). Respondent's conduct violated section 8792, subdivision (a) and (i) (Findings 91 and 92).

16. Cause exists to discipline respondent's LSIT certificate, pursuant to section 8780.1, subdivision (f), and in conjunction with section 8792, subdivision (a) and (i), as set forth in Legal Conclusions 12 through 15.

Statement of Issues: Respondent's Application for Licensure

17. Criminal Convictions. Under section 480, subdivision (a)(1), the Board may deny licensure to an applicant who has been convicted of a crime. Under section 480, subdivision (a)(3)(B), the crime must be substantially related to the qualifications, functions

or duties of the business or profession for which the application is made. The criteria of substantial relationship are set forth in Legal Conclusion 2.

18. As set forth in Legal Conclusion 3, respondent has been convicted of 15 crimes which are substantially related to the profession of land surveying. The factors in aggravation outweigh the factors in mitigation (Findings 42 through 44).

19. Cause exists to deny respondent's application for licensure, pursuant to section 480, subdivisions (a)(1) and (a)(3)(B), as set forth in Legal Conclusion 18.

20. Acts Involving Dishonesty, Fraud or Deceit. Under section 480, subdivision (a)(2), the Board may deny licensure to an applicant who has " ... [d]one any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another."

21. Respondent has committed four acts which involved dishonesty, fraud or deceit, specifically the 1992 commercial burglary (Findings 12 through 14), the 1998 petty theft of personal property (Findings 27 and 28), the 1998 fraudulent use of another's access card (Findings 31 through 34), and the material misrepresentations on his application for licensure (Findings 49 through 52). Respondent committed each of these acts with the intent to substantially benefit himself. In committing these four acts, respondent has violated section 480, subdivision (a)(2).

22. Cause exists to deny respondent's application for licensure, pursuant to section 480, subdivision (a)(2), as set forth in Legal Conclusion 21.

23. Acts if Committed by a Licensee. Under section 480, subdivision (a)(3)(A), the Board may deny a license if the applicant has "... [d]one any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license." As set forth in Legal Conclusions 2 through 5, respondent's criminal convictions are cause for suspension or revocation of his land surveyor-in-training certificate. Therefore, respondent has violated section 480, subdivision (a)(3)(A).

24. Cause exists to deny respondent's application for licensure, pursuant to section 480, subdivision (a)(3)(A), as set forth in Legal Conclusion 23.

25. False Statements/Omissions on Applications. Under section 480, subdivision (c), the Board may deny a license on the ground that the applicant "... knowingly made a false statement of fact required to be revealed in the application for the license."

26. As set forth in Legal Conclusion 7, respondent failed to disclose 14 of his 15 criminal convictions on his application for licensure (Findings 49 through 52).

27. Cause exists to deny respondent's application for licensure, pursuant to section 480, subdivision (c), as set forth in Legal Conclusion 26.

28. Unlicensed Activity. Complainant has alleged unlicensed activity as another basis for denial of respondent's application. In that allegation, complainant cites section 480, subdivision (d), as authority. No such section exists. In Legal Conclusions 9 through 17, the administrative law judge has found that respondent has committed numerous acts of unlicensed activity. Because complainant has failed to allege appropriate authority, respondent's application cannot be denied on this ground.

29. Cause does not exist to deny respondent's application for licensure, pursuant to section 480, subdivision (d), as set forth in Legal Conclusion 28.

Rehabilitation

30. Respondent has failed to show that he has achieved any significant degree of rehabilitation (Findings 94 through 101). His unlicensed acts have occurred as recently as September 2010. Through his conduct in the criminal courts and in his work as a land surveyor-in-training, respondent has shown little respect for the law or for the rules which govern his proposed profession. He has acted virtually independent of meaningful supervision and control by a licensed land surveyor. Such a cavalier attitude places members of the public at risk. Therefore, respondent's certificate must be revoked and his application for licensure must be denied.

Cost Recovery

31. Pursuant to section 125.3, if a licensee is found to have committed a violation, the Board can recover its reasonable costs of investigation and enforcement. The factors for determining the reasonableness of costs have been set forth in *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. Those factors include whether respondent used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; respondent's subjective good faith belief in the merits of her position and whether she has raised a "colorable challenge" to the proposed discipline; the financial ability of respondent to pay; and whether the scope of the investigation was appropriate to the alleged misconduct.

32. Respondent did not use the hearing process to get dismissal of other charges or reduction in the severity of the discipline proposed. He did present a "colorable challenge" with his defense that he was acting as a subordinate under "responsible charge" of two different licensed land surveyors. There was no evidence concerning respondent's ability to pay costs (Finding 104). This was a complex case involving several allegations that required significant investigation. Weighing all these factors, and considering the Board's statement at hearing that it is seeking only one-half the actual costs, it is reasonable to award costs of $18,459.87, as requested.

ORDER

1. Land surveyor-in-training certificate number LST 7040 issued to respondent Marcus Aaron Kinnee is REVOKED for reasons set forth in Legal Conclusions 5, 8 and 16, individually and collectively. Respondent shall relinquish his certificate to the Board within ten (10) days of the effective date of this decision. Respondent may not reapply or petition the Board for reinstatement of his revoked certificate for three (3) years from the effective date of this decision.

2. Respondent shall reimburse the Board for its costs of investigation and prosecution in the amount of $18,459.87 (Legal Conclusion 32). This amount shall be paid in full prior to the reapplication or reinstatement of his revoked certificate, unless otherwise ordered by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of respondent's certificate.

3. The application for licensure as a professional land surveyor of respondent Marcus Aaron Kinnee is DENIED for reasons set forth in Legal Conclusions 19, 22, 24, and 27, individually and collectively.

DATED: March 1, 2011

Original Signed

JOANN I. ESHELMAN
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

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

In the Matter of the Accusation Against: **MARCUS AARON KINNEE** **4765 Henleyville Road** **Corning, California 96021** Land Surveyor-in-Training Certificate No. LST 7040 Respondent.	Case No. 830-A **SECOND AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about January 20, 2006, Respondent Marcus Aaron Kinnee ("Respondent") was granted Certificate No. LST 7040 as a Land Surveyor-in-Training.

3. On February 9, 2005, he certified under penalty of perjury to the truthfulness of all statements, answers, and representations in an Application for Engineer-in-training or Land Surveyor-in-Training Certification.

4. The Application, Question No. G stated the following:

G. Have you ever been convicted of a crime substantially related to the practice of land Surveying?

Respondent checked the NO box.

5. On or about December 10, 2006, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in an Application for Examination or License as a Professional Land Surveyor. The Board received Respondent's Application on January 3, 2007

6. The Application, question number 9, stated the following:

> 9. Have you ever been convicted of a criminal offense, including any misdemeanor, or entered a plea of *nolo contendere* other than for a minor traffic offense. Convictions dismissed under Penal Code section 1203.4 must be disclosed. If YES, explain fully under remarks on page 2.

Respondent checked the YES box.

7. Page 2 of the Application, question number 13, stated as follows:

> 13. Remarks: Use this space for amplifying remarks, and for replies to questions above or on Page 1.

In response to question number 13, Respondent typed in the following:

> In Regards to Section 9 Page 1, in 1997 i was convicted of felony use of another debt access card. In the past 9 years i have stayed clear and out of trouble. I have since Changed and turned my life around 360 degrees. I feel that i am a very capable, responsible and Ethical Candidate for this test. My hard work and References will prove that i will serve the community and the surveying profession in the Highest Regard.

8. On January 31, 2007, the Board sent Respondent a letter requesting certified copies of criminal complaints, information or indictment, plea and judgment and sentencing documents. Kinnee did provide all of the criminal court documents to the Board.

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STATUTORY PROVISIONS

9. Land surveying is governed by the Professional Land Surveyors' Act, Business and Professions Code section 8700 *et. seq*. Land surveying is defined at section 8726 of the Business and Professions Code. Under section 8760 of the Business and Professions Code, a land surveyor may administer and certify oaths as set forth in the statute.

10. Business and Professions Code section 8780.1 provides:

> The board may receive and investigate complaints against land surveyors-in-training and make findings thereon. By a majority vote, the board may revoke the certificate of any land surveyor-in-training:
>
> (a) Who has been convicted of a crime as defined in subdivision (a) of Section 480.
>
> (b) Who has committed any act that would be grounds for denial of a license pursuant to Section 480 or 496.
>
> (c) Who has been found guilty of any fraud, deceit, or misrepresentation in obtaining his or her land surveyor-in-training certificate or license as a professional land surveyor.
>
> (d) Who aids or abets any person in the violation of any provision of this chapter.
>
> (e) Who violates Section 119 with respect to a land surveyor-in-training certificate.
>
> (f) Who commits any act described in Section 8792.
>
> (g) Who violates any provision of this chapter.

11. Business and Professions Code section 8726 provides in pertinent part:

> A person, including any person employed by the state or by a city, county, or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following:
>
> (i) Procures or offers to procure land surveying work for himself/herself, or others.
>
> (j) Manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced.
>
> (k) Coordinates the work of professional, technical, or special consultants in connection with the activities authorized by this chapter.

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12. Business and Professions Code section 8792 (a) and (i) provides in pertinent part that:

> Every person is guilty of a misdemeanor:
>
> > (a) Who, unless he or she is exempt from licensing under this chapter, practices, or offers to practice, land surveying in this state without legal authorization.
> >
> > (i) Who, unless appropriately licensed, manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced, except as authorized pursuant to Section 6731.2 and subdivision (d) of Section 8729. Business and Professions Code section 8726

13. Penal Code section 242 states as follows:

§ 242. Battery defined

BATTERY DEFINED. A battery is any willful and unlawful use of force or violence upon the person of another.

14. Penal Code section 459 states as follows:

§ 459. Definition

> Every person who enters any home, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, . . . with intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this chapter, "inhabited" means currently being used for dwelling purposes, whether occupied or not. A house, trailer, vessel designed for habitation, or portion of a building is currently being used for dwelling purposes if, at the time of the burglary, it was not occupied solely because a natural or other disaster caused the occupants to leave the premises.

15. Penal Code section 484(b), states as follows:

§ 484(f). Forgery; access cards; design, alteration, or use

> (b) A person other than the cardholder or a person authorized by him or her who, with the intent to defraud, signs the name of another or of a fictitious person to an access card, sales slip, sales draft, or instrument for the payment of money which evidences an access card transaction, is guilty of forgery.

16. Penal Code section 485 states as follows:

§ 485. Theft: appropriation of lost property with knowledge or means of inquiry as to true owner.

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One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and to restore the property to him, is guilty of theft.

17. Penal Code section 594(a) states as follows:

§ 594. Vandalism; penalty.

(a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, furnishings, or property belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

18. Business and Professions Code section 25658(a) states as follows:

§ 25658. Providing alcoholic beverages to persons under the ago of 21: prohibition; criminal punishment; law enforcement decoys; additional punishment

(a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

19. Business and Professions Code section 480 states as follows:

§ 480. Acts disqualifying applicant

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

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(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(d) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he ha been convicted of a felony if her has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 4825.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

20. Business and Professions Code section 490, states as follows:

§ 490. Conviction of a Crime

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made

suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

GENERAL BACKGROUND

Conviction: Burglary

21. On April 8, 1992, Respondent unlawfully entered Pritchett's Market, a commercial building, with the intent to commit larceny and any felony. On April 13, 1992, in the County of Tehama, in the Justice Court of the Corning Judicial District, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. F92-18713C, was filed against Respondent alleging one count for violation of Penal Code section 459 [burglary].

On June 17, 1992, Respondent pled guilty to a misdemeanor under Penal Code 459, and was placed on probation. Respondent violated probation in Case No. F92-18713C, by driving with a suspended license on December 8, 1992.

Conviction: Driving With A Suspended License

22. On December 9, 1992, Respondent drove with a suspended license, a violation of Vehicle Code section 14601.1(a). On December 12, 1992, in the Tehama County Municipal Court, Southern Division, a traffic citation (#2161) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR12892, was filed against Respondent alleging a violation of Vehicle Code section 14601.1(a).

On April 5, 1993, Respondent pled guilty to violating Vehicle Code section 14601.1(a), and was required to pay a fine of $840. On August 1, 1994, a bench warrant was ordered against Respondent for failure to pay the fine issued in Case No. SCR12892.

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Conviction: Speeding/Driving With A Suspended License/Failure to Pay Fine

23. On February 4, 1994, Respondent drove over the speed limit and drove with a suspended license. On February 16, 1994, in the Tehama County Municipal Court, Northern Division, a traffic citation (#WN53795), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR14400, was filed against Respondent alleging a violation of Vehicle Code section 22349 [speeding], Vehicle Code section 14601.1(a) [driving with a suspended license], and Vehicle Code section 40508(b) [failure to pay fines].

On March 28, 1994, Respondent pled guilty to violating Vehicle Code sections 22349, 14601.1(a). On December 9, 1994, a bench order was issued against Respondent for failure to pay the fine. On April 8, 1996, Respondent was convicted of Vehicle Code section 40508(b).

Conviction: Expired Registration

24. On April 28, 1994, Respondent drove a vehicle with an expired registration. On May 4, 1994, in the Tehama County Municipal Court, Northern Division, a traffic citation (#WN56163), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT106503, was filed against Respondent alleging a violation of Vehicle Code section 4000(a) [lack of registration].

On August 8, 1994, Respondent pled guilty to Vehicle Code section 4000(a).

Conviction: Expired Registration

25. On July 24, 1994, Respondent drove a vehicle with an expired registration. On July 25, 1994, in the Tehama County Municipal Court, Northern Division, a traffic citation (#WU73830), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT108459, was filed against Respondent alleging a violation of Vehicle Code section 4000(a) [lack of registration].

On September 12, 1994, Respondent pled guilty to Vehicle Code section 4000(a).

Conviction: Unlawful to Drive Without Being Licensed

26. On September 19, 1994, Respondent drove without a license and drove while his license was suspended. On October 1, 1994, in the Tehama County Municipal Court, Northern Division, a traffic citation (#WU75372/WU76110), entitled, *The People of the State of California*

v. Marcus Aaron Kinnee, Case No. NCR38624, was filed against Respondent alleging violations of Vehicle Code sections 12951(a), 4000(a), 14601, and 12500(a).

On November 16, 1994, Respondent pled guilty to Vehicle Code section 12500 [driving without being licensed].

Conviction: Driving With a Suspended License/Driving With Only Parking Lights

27. On April 30, 1997, Respondent drove with a suspended license and with only the parking lights on. On May 2, 1997, in the Tehama County Municipal Court, Southern Division, a traffic citation (#5420) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR17446, was filed against Respondent alleging violations of Vehicle Code section 14601.1(a), and section 24800 [driving with only parking lights].

On October 21, 1997, Respondent pled guilty to violating Vehicle Code section 14601.1(a), and section 24800.

Conviction: Expired Registration

28. Circa December 23, 1997, Respondent drove a vehicle with an expired registration. On December 24, 1997, in the Tehama County Municipal Court, Northern Division, a traffic citation (#6363), entitled, *The People of the State of California v. Marcus Aaron Kinnee,* Case No. ST057388, was filed against Respondent alleging a violation of Vehicle Code section 4000(a) [lack of registration].

On March 10, 1998, Respondent pled guilty to Vehicle Code section 4000(a).

Conviction: Battery

29. On November 22, 1997, Respondent used force and violence against Christie S. and maliciously defaced with graffiti her real and personal property. On March 24, 1998, in the Municipal Court of the Tehama County Judicial District, County of Tehama, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR18417, was filed against Respondent alleging violations of Penal Code section 594(a) [vandalism] and Penal Code section 242 [battery].

On September 1, 1998, Respondent pled guilty to Penal Code section 242.

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Conviction: Petty Theft Of Lost Property

30. On March 14, 1998, Respondent stole personal property of John P. On May 27, 1998, in the Municipal Court of the Tehama County Judicial District, County of Tehama, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR18619, was filed against Respondent alleging violations of Penal Code section 484(a) [petty theft] and Penal Code section 485 [petty theft of lost property].

On September 1, 1998, Respondent pled guilty to violating Penal Code section 485, and was placed on probation with terms and conditions including payment of restitution to the victim. Respondent violated probation and failed to timely pay restitution.

Conviction: Vehicle Code

31. Circa March 29, 1998, Respondent drove without a license and failed to show proof of insurance. On March 31, 1998, in the Municipal Court of the Tehama County Judicial District, County of Tehama, a citation (#6308) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST058095, was filed against Respondent alleging violations of Vehicle Code sections 12500(b) and 16028(a).

On October 13, 1998, Respondent pled guilty to a violation of Vehicle Code sections 12500(b) and 16028(a).

On September 28, 2000, a bench warrant was ordered against Respondent in Case No. ST058095 for failure to obey a court order. On October 31, 2001, Respondent was convicted under Vehicle Code 40508(b) [failure to pay a fine].

Conviction: Fraudulently Using Another's Access Card

32. Circa October 17, 1998, Respondent entered a commercial building occupied by Thomas Wulfert and Company with the intent to commit larceny. On October 19, 1998, and October 21, 1998, Respondent fraudulently used another's access card, with the intent to defraud. On November 3, 1998, in the Superior Court, County of Tehama, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NCR48863, was filed against Respondent alleging violations of Penal Code sections 459 [burglary], 484f(b) [fraudulent use of another's access card], and 484f(b).

On January 4, 1999, Respondent pled guilty to a violation of Penal Code section 484f(b).

Conviction: Driving Unregistered Car/Driving Without Proof of Insurance

33. Circa August 1, 1999, Respondent drove a car without registration and failed to provide evidence of insurance. On August 2, 1999, in the Superior Court, County of Tehama, a traffic citation (#66985) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT149970, was filed against Respondent alleging violations of Vehicle Code sections 4000(a) and 16028(a).

On November 29, 1999, Respondent pled guilty to a violation of Vehicle Code sections 4000(a) and 16028(a). A bench warrant was issued on December 28, 2000 for Respondent's failure to comply with a court order.

Conviction: Illegally Passing a School Bus/No Car Insurance/Unregistered Car

34. Circa September 27, 1999 Respondent drove without proof of insurance, an unregistered car, and illegally passed a school bus with its lights flashing. On September 29, 1999, in the Superior Court, County of Tehama, a traffic citation case (Nos. 7730 and 7727) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST065231, was filed against Respondent alleging violations of Vehicle Code sections 22454 [illegally passing a school bus with flashing lights], 4000(a) [unregistered vehicle] and 16028(a) [proof of financial responsibility].

On January 24, 2000, Respondent pled guilty to a violation of Vehicle Code sections 22454 and 16028(a). A bench warrant was issued on September 28, 2000, for Respondent's failure to comply with a court order.

Conviction: Violation of Promise to Appear/No Car Insurance

35. Circa November 20, 1999 Respondent drove without proof of insurance in an unregistered car. On November 22, 1999, in the Superior Court, County of Tehama, a citation (# 8544) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST066016, was filed against Respondent alleging violations of Vehicle Code sections 4000(a) [unregistered vehicle] and 16028(a) [proof of financial responsibility].

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On January 24, 2000, Respondent pled guilty to a violation of Vehicle Code sections 40508(a) and 16028(a). A bench warrant was issued on September 28, 2000, for Respondent's failure to obey a court order.

Conviction: Furnishing Alcohol To A Minor

36. Circa January 2, 2004, Respondent furnished alcohol to a minor. On April 27, 2004, in the Superior Court, County of Tehama, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR24225, was filed against Respondent alleging a violation of Business and Professions Code section 25658 [furnishing alcohol to a minor].

On April 27, 2004, Respondent pled guilty to Business and Professions Code section 25658, and was placed on probation for 24 months.

FIRST CAUSE FOR DISCIPLINE

(B & P Code §8780.1)

(Convictions of Substantially Related Crimes)

35. Respondent's certificate is subject to discipline pursuant to 8780.1 (a) of the Code, in that Respondent was convicted of the crimes listed above in paragraphs 21 through 35.

36. The above referenced convictions are substantially related to the qualifications, functions, and duties of Certified Land Surveyor-in-Training. The convictions for burglary, petty theft, providing alcohol to minors, fraudulent use of another's access card, illegally passing a school bus, and myriad of traffic violations and repeated failure to comply with the terms of criminal probation all evidence a total disregard for law and order.

SECOND CAUSE FOR DISCIPLINE

B & P Code §8780.1(c)

(False Statement/Omissions Of Facts On Application)

37. Paragraphs 3, 4, and 21 through 35 are incorporated herein by reference. Respondent's certification is subject to discipline pursuant to Business and Professions Code section 8780.1 (c) in that he knowingly made a false statement, or knowingly omitted stating facts required to be revealed in his February 9, 2005, application for Land Surveyor-in-training.

///

38. Respondent failed to disclose his criminal convictions, as set forth in paragraphs 38 above. More specifically, Respondent failed to disclose the following: (1) his 1992 conviction for burglary; (2) his 1997 conviction for battery; (3) his 1998 conviction for petty theft; (4) his 1999 conviction for fraudulently using another's access card; (5) his 2004 conviction for furnishing alcohol to a minor; (6) his numerous vehicle code violations.

39. Respondent's certification is subject to discipline pursuant to Business and Professions Code section 8780.1 (c) in that he knowingly made a false statement, or knowingly omitted stating facts required to be revealed in his January 3, 2007, application for licensure as a Professional Land Surveyor in that he only disclosed his 1997 felony conviction and failed to disclose any other convictions.

THIRD CAUSE FOR DISCIPLINE

B & P Code §8780.1(f)

(Unlicensed Activity)

41. From approximately December 19, 2004, to March 14, 2008, Respondent owned and operated Benchmark Topographics.

42. On or about July 12, 2006, the Tehama County Planning Department received a Tentative Subdivision Map for Lincoln Meadows Estates prepared by Benchmark Topographic.

43 During the period of December 19, 2004 to March 14, 2008, the Tehama County Planning Department received a tentative subdivision map for River View Estates and a tentative subdivision map for North Fork Estates prepared by Benchmark Topographic.

44. During the period of December 19, 2004 to March 14, 2008, Respondent provided services related to marking corners.

45. Respondent's certificate is subject to disciplinary action under section 8780.1(f) in conjunction with Business and Professions Code 8792(a) and (i) in that he solicited, procured, and/or managed a company while he was not licensed to perform surveying services as evidenced by the subdivision maps filed with the Tehama County Planning Department, and the land surveying services such as marking corners provided by Benchmark Topographics.

46. On or about February 10, 2010, Respondent, acting as president of Compass Consulting Corporation, submitted a proposal for Land Surveying services to D.L.

47. On or about March 16, 2010, as president of Compass Consulting Corporation, Respondent submitted a record of survey for D. L. to the Tehama County Public Works Department.

48. Respondent's certificate is subject to disciplinary action under Business and Professions Code section 8726 and 8792(a) and (i) in that he solicited, procured and/or managed a company while he was not licensed to perform surveying services as evidenced by the proposal to D.L. and the Record of Survey filed with the Tehama County Public Works Department.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board For Professional Engineers And Land Surveyors issue a decision:

1. Revoking or suspending Certificate of Land Surveyor-in Training issued to Marcus Aaron Kinnee for a land surveyors license;

2. Awarding costs of investigation and Prosecution; and

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

DATED: October 11, 2010

Original Signed

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

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

In the Matter of the Accusation Against: **MARCUS AARON KINNEE** **4765 Henleyville Road** **Corning, California 96021** Land Surveyor-in-Training Certificate No. LST 7040 Respondent.	Case No. 830-A **THIRD AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about January 20, 2006, Respondent Marcus Aaron Kinnee ("Respondent") was granted Certificate No. LST 7040 as a Land Surveyor-in-Training.

3. On February 9, 2005, he certified under penalty of perjury to the truthfulness of all statements, answers, and representations in an Application for Engineer-in-training or Land Surveyor-in-Training Certification.

4. The Application, Question No. G stated the following:

G. Have you ever been convicted of a crime substantially related to the practice of land Surveying?

Respondent checked the NO box.

5. On or about December 10, 2006, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in an Application for Examination or License as a Professional Land Surveyor. The Board received Respondent's Application on January 3, 2007

6. The Application, question number 9, stated the following:

> 9. Have you ever been convicted of a criminal offense, including any misdemeanor, or entered a plea of *nolo contendere* other than for a minor traffic offense. Convictions dismissed under Penal Code section 1203.4 must be disclosed. If YES, explain fully under remarks on page 2.

Respondent checked the YES box.

7. Page 2 of the Application, question number 13, stated as follows:

> 13. Remarks: Use this space for amplifying remarks, and for replies to questions above or on Page 1.

In response to question number 13, Respondent typed in the following:

> In Regards to Section 9 Page 1, in 1997 i was convicted of felony use of another debt access card. In the past 9 years i have stayed clear and out of trouble. I have since Changed and turned my life around 360 degrees. I feel that i am a very capable, responsible and Ethical Candidate for this test. My hard work and References will prove that i will serve the community and the surveying profession in the Highest Regard.

8. On January 31, 2007, the Board sent Respondent a letter requesting certified copies of criminal complaints, information or indictment, plea and judgment and sentencing documents. Kinnee did provide all of the criminal court documents to the Board.

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STATUTORY PROVISIONS

9. Land surveying is governed by the Professional Land Surveyors' Act, Business and Professions Code section 8700 *et. seq*. Land surveying is defined at section 8726 of the Business and Professions Code. Under section 8760 of the Business and Professions Code, a land surveyor may administer and certify oaths as set forth in the statute.

10. Business and Professions Code section 8780.1 provides:

> The board may receive and investigate complaints against land surveyors-in-training and make findings thereon. By a majority vote, the board may revoke the certificate of any land surveyor-in-training:
>
> (a) Who has been convicted of a crime as defined in subdivision (a) of Section 480.
>
> (b) Who has committed any act that would be grounds for denial of a license pursuant to Section 480 or 496.
>
> (c) Who has been found guilty of any fraud, deceit, or misrepresentation in obtaining his or her land surveyor-in-training certificate or license as a professional land surveyor.
>
> (d) Who aids or abets any person in the violation of any provision of this chapter.
>
> (e) Who violates Section 119 with respect to a land surveyor-in-training certificate.
>
> (f) Who commits any act described in Section 8792.
>
> (g) Who violates any provision of this chapter.

11. Business and Professions Code section 8726 provides in pertinent part:

> A person, including any person employed by the state or by a city, county, or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following:
>
> (i) Procures or offers to procure land surveying work for himself/herself, or others.
>
> (j) Manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced.
>
> (k) Coordinates the work of professional, technical, or special consultants in connection with the activities authorized by this chapter.

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12. Business and Professions Code section 8792 (a) and (i) provides in pertinent part that:

> Every person is guilty of a misdemeanor:
>
> (a) Who, unless he or she is exempt from licensing under this chapter, practices, or offers to practice, land surveying in this state without legal authorization.
>
> (i) Who, unless appropriately licensed, manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced, except as authorized pursuant to Section 6731.2 and subdivision (d) of Section 8729. Business and Professions Code section 8726

13. Penal Code section 242 states as follows:

§ 242. Battery defined

BATTERY DEFINED. A battery is any willful and unlawful use of force or violence upon the person of another.

14. Penal Code section 459 states as follows:

§ 459. Definition

> Every person who enters any home, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, . . . with intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this chapter, "inhabited" means currently being used for dwelling purposes, whether occupied or not. A house, trailer, vessel designed for habitation, or portion of a building is currently being used for dwelling purposes if, at the time of the burglary, it was not occupied solely because a natural or other disaster caused the occupants to leave the premises.

15. Penal Code section 484(b), states as follows:

§ 484(f). Forgery; access cards; design, alteration, or use

> (b) A person other than the cardholder or a person authorized by him or her who, with the intent to defraud, signs the name of another or of a fictitious person to an access card, sales slip, sales draft, or instrument for the payment of money which evidences an access card transaction, is guilty of forgery.

16. Penal Code section 485 states as follows:

§ 485. Theft: appropriation of lost property with knowledge or means of inquiry as to true owner.

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One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and to restore the property to him, is guilty of theft.

17. Penal Code section 594(a) states as follows:

§ 594. Vandalism; penalty.

(a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, furnishings, or property belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

18. Business and Professions Code section 25658(a) states as follows:

§ 25658. Providing alcoholic beverages to persons under the ago of 21: prohibition; criminal punishment; law enforcement decoys; additional punishment

(a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

19. Business and Professions Code section 480 states as follows:

§ 480. Acts disqualifying applicant

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

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(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(d) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he ha been convicted of a felony if her has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 4825.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

20. Business and Professions Code section 490, states as follows:

§ 490. Conviction of a Crime

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made

suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

20(a). Business and Professions Code section 125.3 provides in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

GENERAL BACKGROUND

Conviction: Burglary

21. On April 8, 1992, Respondent unlawfully entered Pritchett's Market, a commercial building, with the intent to commit larceny and any felony. On April 13, 1992, in the County of Tehama, in the Justice Court of the Corning Judicial District, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. F92-18713C, was filed against Respondent alleging one count for violation of Penal Code section 459 [burglary].

On June 17, 1992, Respondent pled guilty to a misdemeanor under Penal Code 459, and was placed on probation. Respondent violated probation in Case No. F92-18713C, by driving with a suspended license on December 8, 1992.

Conviction: Driving With A Suspended License

22. On December 9, 1992, Respondent drove with a suspended license, a violation of Vehicle Code section 14601.1(a). On December 12, 1992, in the Tehama County Municipal Court, Southern Division, a traffic citation (#2161) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR12892, was filed against Respondent alleging a violation of Vehicle Code section 14601.1(a).

On April 5, 1993, Respondent pled guilty to violating Vehicle Code section 14601.1(a), and was required to pay a fine of $840. On August 1, 1994, a bench warrant was ordered against Respondent for failure to pay the fine issued in Case No. SCR12892.

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Conviction: Speeding/Driving With A Suspended License/Failure to Pay Fine

23. On February 4, 1994, Respondent drove over the speed limit and drove with a suspended license. On February 16, 1994, in the Tehama County Municipal Court, Northern Division, a traffic citation (#WN53795), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR14400, was filed against Respondent alleging a violation of Vehicle Code section 22349 [speeding], Vehicle Code section 14601.1(a) [driving with a suspended license], and Vehicle Code section 40508(b) [failure to pay fines].

On March 28, 1994, Respondent pled guilty to violating Vehicle Code sections 22349, 14601.1(a). On December 9, 1994, a bench order was issued against Respondent for failure to pay the fine. On April 8, 1996, Respondent was convicted of Vehicle Code section 40508(b).

Conviction: Expired Registration

24. On April 28, 1994, Respondent drove a vehicle with an expired registration. On May 4, 1994, in the Tehama County Municipal Court, Northern Division, a traffic citation (#WN56163), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT106503, was filed against Respondent alleging a violation of Vehicle Code section 4000(a) [lack of registration].

On August 8, 1994, Respondent pled guilty to Vehicle Code section 4000(a).

Conviction: Expired Registration

25. On July 24, 1994, Respondent drove a vehicle with an expired registration. On July 25, 1994, in the Tehama County Municipal Court, Northern Division, a traffic citation (#WU73830), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT108459, was filed against Respondent alleging a violation of Vehicle Code section 4000(a) [lack of registration].

On September 12, 1994, Respondent pled guilty to Vehicle Code section 4000(a).

Conviction: Unlawful to Drive Without Being Licensed

26. On September 19, 1994, Respondent drove without a license and drove while his license was suspended. On October 1, 1994, in the Tehama County Municipal Court, Northern Division, a traffic citation (#WU75372/WU76110), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NCR38624, was filed against Respondent alleging violations of Vehicle Code sections 12951(a), 4000(a), 14601, and 12500(a).

On November 16, 1994, Respondent pled guilty to Vehicle Code section 12500 [driving without being licensed].

Conviction: Driving With a Suspended License/Driving With Only Parking Lights

27. On April 30, 1997, Respondent drove with a suspended license and with only the parking lights on. On May 2, 1997, in the Tehama County Municipal Court, Southern Division, a traffic citation (#5420) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR17446, was filed against Respondent alleging violations of Vehicle Code section 14601.1(a), and section 24800 [driving with only parking lights].

On October 21, 1997, Respondent pled guilty to violating Vehicle Code section 14601.1(a), and section 24800.

Conviction: Expired Registration

28. Circa December 23, 1997, Respondent drove a vehicle with an expired registration. On December 24, 1997, in the Tehama County Municipal Court, Northern Division, a traffic citation (#6363), entitled, *The People of the State of California v. Marcus Aaron Kinnee,* Case No. ST057388, was filed against Respondent alleging a violation of Vehicle Code section 4000(a) [lack of registration].

On March 10, 1998, Respondent pled guilty to Vehicle Code section 4000(a).

Conviction: Battery

29. On November 22, 1997, Respondent used force and violence against Christie S. and maliciously defaced with graffiti her real and personal property. On March 24, 1998, in the Municipal Court of the Tehama County Judicial District, County of Tehama, a complaint entitled,

The People of the State of California v. Marcus Aaron Kinnee, Case No. SCR18417, was filed against Respondent alleging violations of Penal Code section 594(a) [vandalism] and Penal Code section 242 [battery].

On September 1, 1998, Respondent pled guilty to Penal Code section 242.

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Conviction: Petty Theft Of Lost Property

30. On March 14, 1998, Respondent stole personal property of John P. On May 27, 1998, in the Municipal Court of the Tehama County Judicial District, County of Tehama, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR18619, was filed against Respondent alleging violations of Penal Code section 484(a) [petty theft] and Penal Code section 485 [petty theft of lost property].

On September 1, 1998, Respondent pled guilty to violating Penal Code section 485, and was placed on probation with terms and conditions including payment of restitution to the victim. Respondent violated probation and failed to timely pay restitution.

Conviction: Vehicle Code

31. Circa March 29, 1998, Respondent drove without a license and failed to show proof of insurance. On March 31, 1998, in the Municipal Court of the Tehama County Judicial District, County of Tehama, a citation (#6308) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST058095, was filed against Respondent alleging violations of Vehicle Code sections 12500(b) and 16028(a).

On October 13, 1998, Respondent pled guilty to a violation of Vehicle Code sections 12500(b) and 16028(a).

On September 28, 2000, a bench warrant was ordered against Respondent in Case No. ST058095 for failure to obey a court order. On October 31, 2001, Respondent was convicted under Vehicle Code 40508(b) [failure to pay a fine].

Conviction: Fraudulently Using Another's Access Card

32. Circa October 17, 1998, Respondent entered a commercial building occupied by Thomas Wulfert and Company with the intent to commit larceny. On October 19, 1998, and

October 21, 1998, Respondent fraudulently used another's access card, with the intent to defraud. On November 3, 1998, in the Superior Court, County of Tehama, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NCR48863, was filed against Respondent alleging violations of Penal Code sections 459 [burglary], 484f(b) [fraudulent use of another's access card], and 484f(b).

On January 4, 1999, Respondent pled guilty to a violation of Penal Code section 484f(b).

Conviction: Driving Unregistered Car/Driving Without Proof of Insurance

33. Circa August 1, 1999, Respondent drove a car without registration and failed to provide evidence of insurance. On August 2, 1999, in the Superior Court, County of Tehama, a traffic citation (#66985) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT149970, was filed against Respondent alleging violations of Vehicle Code sections 4000(a) and 16028(a).

On November 29, 1999, Respondent pled guilty to a violation of Vehicle Code sections 4000(a) and 16028(a). A bench warrant was issued on December 28, 2000 for Respondent's failure to comply with a court order.

Conviction: Illegally Passing a School Bus/No Car Insurance/Unregistered Car

34. Circa September 27, 1999 Respondent drove without proof of insurance, an unregistered car, and illegally passed a school bus with its lights flashing. On September 29, 1999, in the Superior Court, County of Tehama, a traffic citation case (Nos. 7730 and 7727) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST065231, was filed against Respondent alleging violations of Vehicle Code sections 22454 [illegally passing a school bus with flashing lights], 4000(a) [unregistered vehicle] and 16028(a) [proof of financial responsibility].

On January 24, 2000, Respondent pled guilty to a violation of Vehicle Code sections 22454 and 16028(a). A bench warrant was issued on September 28, 2000, for Respondent's failure to comply with a court order.

Conviction: Violation of Promise to Appear/No Car Insurance

35. Circa November 20, 1999 Respondent drove without proof of insurance in an unregistered car. On November 22, 1999, in the Superior Court, County of Tehama, a citation (# 8544) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST066016, was filed against Respondent alleging violations of Vehicle Code sections 4000(a) [unregistered vehicle] and 16028(a) [proof of financial responsibility].

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On January 24, 2000, Respondent pled guilty to a violation of Vehicle Code sections 40508(a) and 16028(a). A bench warrant was issued on September 28, 2000, for Respondent's failure to obey a court order.

Conviction: Furnishing Alcohol To A Minor

36. Circa January 2, 2004, Respondent furnished alcohol to a minor. On April 27, 2004, in the Superior Court, County of Tehama, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR24225, was filed against Respondent alleging a violation of Business and Professions Code section 25658 [furnishing alcohol to a minor].

On April 27, 2004, Respondent pled guilty to Business and Professions Code section 25658, and was placed on probation for 24 months.

FIRST CAUSE FOR DISCIPLINE

(B & P Code §8780.1)

(Convictions of Substantially Related Crimes)

35. Respondent's certificate is subject to discipline pursuant to 8780.1 (a) of the Code, in that Respondent was convicted of the crimes listed above in paragraphs 21 through 35.

36. The above referenced convictions are substantially related to the qualifications, functions, and duties of Certified Land Surveyor-in-Training. The convictions for burglary, petty theft, providing alcohol to minors, fraudulent use of another's access card, illegally passing a school bus, and myriad of traffic violations and repeated failure to comply with the terms of criminal probation all evidence a total disregard for law and order.

SECOND CAUSE FOR DISCIPLINE

B & P Code §8780.1(c)

(False Statement/Omissions Of Facts On Application)

37. Paragraphs 3, 4, and 21 through 35 are incorporated herein by reference. Respondent's certification is subject to discipline pursuant to Business and Professions Code section 8780.1 (c) in that he knowingly made a false statement, or knowingly omitted stating facts required to be revealed in his February 9, 2005, application for Land Surveyor-in-training.

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38. Respondent failed to disclose his criminal convictions, as set forth in paragraphs 38 above. More specifically, Respondent failed to disclose the following: (1) his 1992 conviction for burglary; (2) his 1997 conviction for battery; (3) his 1998 conviction for petty theft; (4) his 1999 conviction for fraudulently using another's access card; (5) his 2004 conviction for furnishing alcohol to a minor; (6) his numerous vehicle code violations.

39. Respondent's certification is subject to discipline pursuant to Business and Professions Code section 8780.1 (c) in that he knowingly made a false statement, or knowingly omitted stating facts required to be revealed in his January 3, 2007, application for licensure as a Professional Land Surveyor in that he only disclosed his 1997 felony conviction and failed to disclose any other convictions.

THIRD CAUSE FOR DISCIPLINE

B & P Code §8780.1(f)

(Unlicensed Activity)

41. From approximately December 19, 2004, to March 14, 2008, Respondent owned and operated Benchmark Topographics.

42. On or about July 12, 2006, the Tehama County Planning Department received a Tentative Subdivision Map for Lincoln Meadows Estates prepared by Benchmark Topographic.

43 During the period of December 19, 2004 to March 14, 2008, the Tehama County Planning Department received a tentative subdivision map for River View Estates and a tentative subdivision map for North Fork Estates prepared by Benchmark Topographic.

44. During the period of December 19, 2004 to March 14, 2008, Respondent provided services related to marking corners.

45. Respondent's certificate is subject to disciplinary action under section 8780.1(f) in conjunction with Business and Professions Code 8792(a) and (i) in that he solicited, procured, and/or managed a company while he was not licensed to perform surveying services as evidenced by the subdivision maps filed with the Tehama County Planning Department, and the land surveying services such as marking corners provided by Benchmark Topographics.

46. On or about February 10, 2010, Respondent, acting as president of Compass Consulting Corporation, submitted a proposal for Land Surveying services to D.L.

47. On or about March 16, 2010, as president of Compass Consulting Corporation, Respondent submitted a record of survey for D. L. to the Tehama County Public Works Department.

47(a). Respondent doing buisness as Benchmark Topographics was guilty of unlicensed practice in preparing and submitting the following documents:

a) the documents pertaining to Mitten Ranch Estates.

b) the documents pertaining to California Family Foods.

48. Respondent's certificate is subject to disciplinary action under Business and Professions Code section 8726 and 8792(a) and (i) in that he solicited, procured and/or managed a company while he was not licensed to perform surveying services as evidenced by the proposal to D.L. and the Record of Survey filed with the Tehama County Public Works Department.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board For Professional Engineers And Land Surveyors issue a decision:

1. Revoking or suspending Certificate of Land Surveyor-in Training issued to Marcus Aaron Kinnee for a land surveyors license;

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2. Awarding costs of investigation and Prosecution; and

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

DATED: _____

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

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Attorneys for Complainant

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

In the Matter of the Statement of Issues Against: **MARCUS AARON KINNEE** **4765 Henleyville Road** **Corning, California 96021** Respondent.	Case No. 676-S **SECOND AMENDED STATEMENT OF ISSUES**

Complainant alleges:

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

2. On or about December 10, 2006, Respondent, Marcus Aaron Kinnee ("Respondent") certified under penalty of perjury to the truthfulness of all statements, answers and representations in an Application for Examination for License as Professional Land Surveyor. The Board received Respondent's Application on January 3, 2007.

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3. The Application, question number 9, stated the following:

> 9. Have you ever been convicted of a criminal offense, including any misdemeanor, or entered a plea of *nolo contendere* other than for a minor traffic offense? Convictions dismissed under Penal Code section 1203.4 must be disclosed. If YES, explain fully under remarks on Page 2.

Respondent checked the YES box.

4. Page 2 of the Application, question number 13, stated as follows:

> 13. Remarks: Use this space for amplifying remarks, and for replies to questions above or on Page 1.

In response to question number 13, Respondent typed in the following:

> "In Regards to Section 9, Page 1, in 1997 i [sic] was convicted of felony use of another debt access card. In the past 9 years i [sic] have stayed clear and out of trouble. I have since Changed and turned my life around 360 degrees. I feel that i [sic] am a very capable, responsible and Ethical Candidate for this test. My hard work and References will prove that i [sic] will serve the community and the surveying profession in the Highest Regard."

5. On January 31, 2007, the Board sent Respondent a letter requesting certified copies of criminal complaints, information or indictment, plea and judgment and sentencing documents. Kinnee did provide all of the criminal court documents to the Board.

6. On April 2, 2007, the Board denied Respondent's application for licensure as a Land Surveyor, pursuant to Business and Professions Code section 480 and section 475.

7. After the denial of Licensure, on April 16, 2007, Respondent, through counsel, requested an appeal of the denial of application for a Land Surveyor's license.

II.

STATUTORY PROVISIONS

8. Land surveying is governed by the Professional Land Surveyors' Act, Business and Professions Code section 8700 *et. seq.* Land surveying is defined at section 8726 of the Business and Professions Code. Under section 8760 of the Business and Professions Code, a land surveyor may administer and certify oaths as set forth in the statute.

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9. Business and Professions Code section 8726 provides in pertinent part:

> A person, including any person employed by the state or by a city, county or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following: (i) Procures or offers to procure land surveying work for himself, herself, or others. (j) Manages or conducts as manager, or agent, any place of business from which land surveying work is solicited, performed or practiced. (k) Coordinates the work of professional, technical or special consultants in connection with the activities authorized by this chapter.

10. Business and Professions Code section 8792(a) and (i) provides in pertinent part that:

> Every person is guilty of a misdemeanor: (a) Who, unless he or she is exempt from licensing under this chapter, practices or offers to practice, land surveying in this state without legal authorization. (i) Who, unless appropriately licensed, mages or conducts as manager, proprietor or agent, any place of business from which land surveying work is solicited, performed, or practiced, except as authorized pursuant to Section 6731.2 and subdivision (d) of Section 8729. Business and Professions Code section 8726.

11. Penal Code section 242 states as follows:

§ 242. Battery defined:

> BATTERY DEFINED. A battery is any willful and unlawful use of force or violence upon the person of another.

12. Penal Code section 459 states as follows:

§ 459. Definition:

> Every person who enters any home, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent…with intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this chapter, "inhabited" means currently being used for dwelling purposes, whether occupied or not. A house, trailer, vessel designed for habitation, or portion of a building is currently being used for dwelling purposes if, at the time of the burglary, it was not occupied solely because a natural or other disaster caused the occupants to leave the premises.

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13. Penal Code section 484(b), states as follows:

§ 484(f). Forgery; access cards; design, alteration, or use:

(b) A person other than the cardholder or a person authorized by him or her who, with the intent to defraud, signs the name of another or of a fictitious person to an access card, sales slip, sales draft, or instrument for the payment of money which evidences an access card transaction, is guilty of forgery.

14. Penal Code section 485 states as follows:

§ 485. Theft: appropriation of lost property with knowledge of means of inquiry as to true owner.

One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just effort to find the owner and to restore the property to him, is guilty of theft.

15. Penal Code section 594(a) states as follows:

§ 594. Vandalism; penalty.

(a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti of other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, furnishings or property belonging to any public entity, as defined by section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage or destroy the property.

16. Business and Professions Code section 25658(a) states as follows:

§ 25658. Providing alcoholic beverages to persons under the age of 21: prohibition; criminal punishment; law enforcement decoys; additional punishment.

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(a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

17. Business and Professions Code section 480 states as follows:

§ 480. Acts disqualifying applicant.

(a) A Board may deny a license regulated by this code on the grounds that the applicant has one of the following:

> (1) Been convicted of a crime. A conviction within the meaning of this Section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere.* Any action which a Board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of section 1203.4 of the Penal Code.
>
> (2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or
>
> (d) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
>
> The Board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business and profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the Board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 4825.

(c) A Board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

18. Business and Professions Code section 475(a), states as follows:

§ 475. Denial of licenses; grounds.

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

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(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

III.

GENERAL BACKGROUND

Conviction: Burglary

19. On April 8, 1992, Respondent unlawfully entered Pritchett's Market, a commercial building, with the intent to commit larceny and any felony. On April 13, 1992, in the County of Tehama, in the Justice Court of the Corning Judicial District, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. F92-18713C, was filed against Respondent alleging one count for violation of Penal Code section 459 [burglary].

On June 17, 1992, Respondent pled guilty to a misdemeanor under Penal Code section 459 and was placed on probation. Respondent violated probation in Case F92-18713C, by driving with a suspended license on December 8, 1992.

Conviction: Driving With a Suspended License

20. On December 9, 1992, Respondent drove with a suspended license, a violation of Vehicle Code section 14601.1(a). On December 12, 1992, in the Tehama County Municipal Court, Southern Division, a traffic citation (#2161) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR12892, was filed against Respondent alleging a violation of Vehicle Code section 14601.1(a).

On April 5, 1993, Respondent pled guilty to violating Vehicle Code section 14601.1(a) and was required to pay a fine of $840. On August 1, 1994, a bench warrant was ordered against Respondent for failure to pay the fine issued in Case No. SCR12892.

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Conviction: Speeding/Driving With a Suspended License/Failure to Pay Fine

21. On February 4, 1994, Respondent drove over the speed limit and drove with a suspended license. On February 16, 1994, in the Tehama County Municipal Court, Northern Division, a traffic citation (#WN53795), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR14400, was filed against Respondent alleging a violation of Vehicle Code section 22349 [speeding], Vehicle Code section 14601.1(a) [driving with a suspended license], and Vehicle Code section 40508(b) [failure to pay fines].

On March 28, 1994, Respondent pled guilty to violating Vehicle Code sections 22349, 14601.1(a). On December 9, 1994, a bench warrant was issued against Respondent for failure to pay the fine. On April 8, 1996, Respondent was convicted of Vehicle Code section 40508(b).

Conviction: Expired Registration

22. On April 28, 1994, Respondent drove a vehicle with an expired registration. On May 4, 1994, in the Tehama County Municipal Court, Northern Division, a traffic citation (#WN56163), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT106503, was filed against Respondent alleging a violation of Vehicle Code section 4000(e) [lack of registration].

On August 8, 1994, Respondent pled guilty to Vehicle Code section 4000(a).

Conviction: Expired Registration

23. On July 24, 1994, Respondent drove a vehicle with an expired registration. On July 25, 1994, in the Tehama County Municipal Court, Northern Division, a traffic citation (#WN73830), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT108459, was filed against Respondent alleging a violation of Vehicle Code section 4000(a) [lack of registration].

On September 12, 1994, Respondent pled guilty to Vehicle Code section 4000(a).

Conviction: Unlawful to Drive Without Being Licensed

On September 19, 1994, Respondent drove without a license and drove while his license was suspended. On October 1, 1994, in the Tehama County Municipal Court, Northern

Division, a traffic citation (#WN75372/WU76110), entitled, *The People of the State of California v. Marcus Aaron Kinnee,* Case No. NCR38624, was filed against Respondent alleging violations of Vehicle Code sections 12951(a), 4000(a), 14601 and 12500(a).

On November 16, 1994, Respondent pled guilty to Vehicle Code section 12500 [driving without being licensed].

Conviction: Driving With a Suspended License/Driving With Only Parking Lights

On April 30, 1997, Respondent drove with a suspended license and with only the parking lights on. On May 2, 1997, in the Tehama County Municipal Court, Southern Division, a traffic citation (#5420) entitled, *The People of the State of California v. Marcus Aaron Kinnee,* Case No. SCR17446, was filed against Respondent alleging violations of Vehicle Code section 14601.1(a), and section 24800 [driving with only parking lights].

On October 21, 1997, Respondent pled guilty to violating Vehicle Code section 146101.1(a) and section 24800.

Conviction: Expired Registration

25. Circa December 23, 1997, Respondent drove a vehicle with an expired registration. On December 24, 1997, in the Tehama County Municipal Court, Northern Division, a traffic citation (#6363), entitled *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST057388, was filed against Respondent alleging a violation of Vehicle Code section 4000(a) [lack of registration].

On March 10, 1998, Respondent pled guilty to Vehicle Code section 4000(a).

Conviction: Battery

26. On November 22, 1997, Respondent used force and violence against Christie S. and maliciously defaced with graffiti her real and personal property. On March 24, 1998, in the Municipal Court of the Tehama County Judicial District, County of Tehama, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee,* Case No. SCR18417, was filed against Respondent alleging violations of Penal Code section 594(a) [vandalism] and Penal Code section 242 [battery].

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On September 1, 1998, Respondent pled guilty to Penal Code section 242.

Conviction: Petty Theft of Lost Property

27. On March 14, 1998, Respondent stole personal property of John P. On May 27, 1998, in the Municipal Court of the Tehama County Judicial District, County of Tehama, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR18619, was filed against Respondent alleging violations of Penal Code section 484(a) [petty theft] and Penal Code section 485 [petty theft of lost property].

On September 1, 1998, Respondent pled guilty to violating Penal Code section 485 and was placed on probation with terms and conditions including payment of restitution to the victim. Respondent violated probation and failed to timely pay restitution.

Conviction: Vehicle Code

28. Circa March 29, 1998, Respondent drove without a license and failed to show proof of insurance. On March 31, 1998, in the Municipal Court of the Tehama County Judicial District, County of Tehama, a citation (#6308) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. STO58095, was filed against Respondent alleging violations of Vehicle Code sections 12500(b) and 16028(a).

On October 13, 1998, Respondent pled guilty to a violation of Vehicle Code sections 12500(b) and 16028(a).

On September 28, 2000, a bench warrant was ordered against Respondent in Case No. STO58095 for failure to obey a court order. On October 31, 2001, Respondent was convicted under Vehicle Code section 40508(b) [failure to pay a fine].

Conviction: Fraudulently Using Another's Access Card

29. Circa October 17, 1998, Respondent entered a commercial building occupied by Thomas Wulfert and Company with the intent to commit larceny. On October 19, 1998, Respondent fraudulently used another's access card, with the intent to defraud. On November 3, 1998, in the Superior Court, County of Tehama, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NCR48863, was filed against

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Respondent alleging violations of Penal Code sections 459 [burglary], 484f(b) [fraudulent use of another's access card].

On January 4, 1999, Respondent pled guilty to a violation of Penal Code section 484f(b).

Conviction: Driving Unregistered Car/Driving Without Proof of Insurance

30 Circa August 1, 1999, Respondent drove a car without registration and failed to provide evidence of insurance. On August 2, 1999, in the Superior Court, County of Tehama, a traffic citation (#66985) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT149970, was filed against respondent alleging violations of Vehicle Code sections 4000(a) and 16028(a).

On November 29, 1999, Respondent pled guilty to a violation of Vehicle Code sections 4000(a) and 16028(a). A bench warrant was issued on December 28, 2000 for Respondent's failure to comply with a court order.

Conviction: Illegally Passing a School Bus/No Car Insurance/Unregistered Car

31. Circa September 27, 1999, Respondent drove without proof of insurance, an unregistered car and illegally passed a school bus with its lights flashing. On September 29, 1999, in the Superior Court, County of Tehama, a traffic citation case (Nos. 7730 and 7727) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST065231, was filed against Respondent alleging violations of Vehicle Code sections 22454 [illegally passing a school bus with flashing lights], 4000(a) [unregistered vehicle] and 16028(a) [proof of financial responsibility].

On January 24, 2000, Respondent pled guilty to a violation of Vehicle Code sections 22454 and 16028(a). A bench warrant was issued on September 28, 2000, for Respondent's failure to comply with a court order.

Conviction: Violation of Promise to Appear/No Car Insurance

32. Circa November 20, 1999, Respondent drove without proof of insurance in an unregistered car. On November 22, 1999, in the Superior Court, County of Tehama, a citation (#8544) entitled *The People of the State of California v. Marcus Aaron Kinnee*, Case No.

ST066016, was filed against Respondent alleging violations of Vehicle Code sections 4000(a) [unregistered vehicle] and 16028(a) [proof of financial responsibility].

On January 24, 2000, Respondent pled guilty to a violation of Vehicle Code sections 4000(a) and 16028(a). A bench warrant was issued on September 28, 2000, for Respondent's failure to obey a court order.

Conviction: Furnishing Alcohol to a Minor

33. Circa January 2, 2004, Respondent furnished alcohol to a minor. On April 27, 2004, in the Superior Court, County of Tehama, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR24225, was filed against Respondent alleging a violation of Business and Professions Code section 25658 [furnishing alcohol to a minor].

On April 27, 2004, Respondent pled guilty to Business and Profession Code section 25658, and was placed on probation for 24 months.

Conviction: Speeding

34. On July 27, 2005, Respondent drove over the speed limit. On July 29, 2005, in the Superior Court, County of Tehama, a citation (#41447VT) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST105998, was filed against Respondent alleging a violation of Vehicle Code section 22349 [excessive speed].

Because Respondent failed to attend traffic school or pay the fine, on November 4, 2005, a complaint was filed against Respondent for violating Vehicle Code section 40508(a). On February 8, 2007, Respondent was convicted of Vehicle Code sections 22349(b) and 40508(a).

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IV.

STATUTORY AUTHORITY

FIRST CAUSE FOR DENIAL OF APPLICATION

B & P Code § 480(a)(1)

(Convictions of Substantially Related Crimes)

35. Paragraphs 17 through 33 are incorporated herein by reference. Respondent's application is subject to denial under Section 480(a)(1) of the Code, in that Respondent was convicted of the following crimes:

a. On June 17, 1992, in the case entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. F92-18713C, Respondent was convicted under Penal Code section 459 [burglary].

b. On April 5, 1993, in the traffic citation case (#2161) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR12892, Respondent was convicted of violating Vehicle Code section 14601.1(a) [driving with a suspended license].

c. On March 28, 1994, in the traffic citation case (#WN53795), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR14400, Respondent was convicted of violating Vehicle Code sections 22349 [speeding], 146101.(a) [driving with a suspended license]. On April 8, 1996, Respondent was convicted of Vehicle Code section 40508(a) [failure to pay fine].

d. On August 8, 1994, in the traffic citation case (#WN56163), entitled *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT106503, Respondent was convicted for a violation of Vehicle Code section 4000(a) [lack of registration].

e. On September 12, 1994, in the traffic citation case (#WU73830), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT108459, Respondent was convicted for a violation of Vehicle Code section 4000(a) [lack of registration].

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f. On November 16, 1994, in the traffic citation case (#WU75372/WU76110), entitled *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NCR38624, Respondent was convicted for a violation of Vehicle Code section 12500 [driving without being licensed].

g. On October 21, 1997, in the traffic citation case (#5420) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR17446, Respondent was convicted for violating Vehicle Code section 146101.1(a), and section 24800 [driving with only parking lights].

h. On March 10, 1998, in the traffic citation case (#6363) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST057388, Respondent was convicted of violating Vehicle Code section 4000(a) [lack of registration].

i. On September 1, 1998, in case entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR18417, Respondent was convicted of violating Penal Code section 242 [battery].

j. On September 1, 1988, in the case entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR18619, Respondent was convicted for violating Penal Code section 485 [petty theft of lost property].

k. On October 13, 1998, in the citation case (36308) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST058095, Respondent was convicted of violating Vehicle Code sections 12500(b) and 16028(a), and placed on probation. Due to Respondent's failure to pay the fine, he was convicted on October 31, 2001 under Vehicle Code section 40508(b) [failure to pay a fine].

l. On January 4, 1999, in the case entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NCR48863, Respondent was convicted of violation of Penal Code section 484f(b) [fraudulent use of another's access card].

m. On November 29, 1999, in the traffic citation case (#66985) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT 149970, Respondent was convicted of violating Vehicle Code sections 4000(a) and 16028(a).

n. On January 24, 2000, in the traffic citation case (Nos. 7730 and 7727) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST065231, Respondent was convicted of violating Vehicle Code sections 22454 [illegally passing a school bus with flashing lights], and 16028(a) [failure to show proof of financial responsibility].

o. On January 24, 2000, in the traffic citation case (#8544) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST066016, Respondent was convicted of violating Vehicle Code sections 40508(a) [violation of promise to appear] and 16028(a) [proof of financial responsibility].

p. On April 27, 2004, in the case entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR24225, Respondent was convicted of violating Business and Professions Code section 25658 [furnishing alcohol to a minor].

q. On February 8, 2007, in the traffic citation case (#41447VT) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST105998, Respondent was convicted of violating Vehicle Code section 22349 [excessive speed] and Vehicle Code section 40508(a) [failure to pay fines].

36. The above referenced convictions are substantially related to the qualifications, functions and duties of a licensed land surveyor. The convictions for burglary, petty theft, providing alcohol to minors, fraudulent use of another's access card, illegally passing a school bus, and myriad of traffic violations and repeated failure to comply with the terms of criminal probation all evidence a total disregard for law and order. Land surveyors are required to comply with numerous ordinances, laws, custom and practice and are required to administer and certify oaths (Business and Professions Code section 8760). Additionally, the license of a land surveyor allows a land surveyor to sign with their seal or stamp to truth and veracity of maps, plans, reports, descriptions or other documents. Respondent's conduct over the past 15 years shows an utter lack of concern for the public health, safety and welfare.

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SECOND CAUSE FOR DENIAL OF APPLICATION

B & P § 480(a)(2)

(Acts Involving Dishonesty, Fraud or Deceit)

37. Respondent's application is subject to denial under section 480(a)(2) of the Code, due to committing the following acts involving dishonesty, fraud or deceit with the intent to substantially benefit himself:

a. Committing burglary on April 8, 1992.

b. Stealing personal property of John P. on March 14, 1998.

c. Fraudulently using another's access card on October 19, 1998 and October 21, 1998.

d. Making false material misrepresentations on his license application.

THIRD CAUSE FOR DENIAL OF APPLICATION

B & P § 480(a)(3)

(Act, if Committed by a Licensee, Which Would be Grounds)

(for Suspension or Revocation of a Licensee)

38. Paragraphs 2 through 4, and 19 through 34 are incorporated herein by reference. Respondent's application is subject to denial under section 480(a)(3) of the Code, in that he committed acts and was convicted of crimes as set forth in paragraph 38 above, which if done by a licentiate, would constitute grounds for suspension or revocation of a license under sections 8780(b), 8780(d), 8792(d) and 490 of the Business and Professions Code.

FOURTH CAUSE FOR DENIAL OF APPLICATION

B & P Code § 480(c)

(False Statement/Omissions of Facts on Application)

39. Paragraphs 2 through 4, and 35 are incorporated herein by reference. Respondent's application is subject to denial under section 480(c) of the Code in that he knowingly made a false statement, or knowingly omitted stating facts required to be revealed in his January 3, 1997 application for a land surveyor.

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40. Respondent failed to disclose his criminal convictions, as set forth in paragraph 38 above. More specifically, Respondent failed to disclose the following: (1) his 1992 conviction for burglary; (2) his 1997 conviction for battery; (3) his 1998 conviction for petty theft; (4) his 1999 conviction for fraudulently using another's access card; (5) his 2004 conviction for furnishing alcholol to a minor; (6) his numerous vehicle code violations ; and (7) his repeated convictions for failure to comply with numerous criminal probations arising out of vehicle code violations. Instead, to reiterate, Respondent made the following representation in his application as to his criminal conviction record:

> In Regards to Section 9 Page 1, in 1997 i was convicted of felony use of another debt access card. In the past 9 years i have stayed clear and out of trouble. I have since Changed and turned my life around 360 degrees. I feel that i am a very capable, responsible and Ethical Candidate for this test. My hard work and References will prove that i will serve the community and the surveying profession in the Highest Regard.

FIFTH CAUSE FOR DENIAL OF APPLICATION

B & P Code § 480(d)

(Unlicensed Activity)

41. From approximately December 19, 2004 to March 8, 2008, Respondent owned and operated Benchmark Topographics.

42. On or about July 12, 2006, the Tehama County Planning Department received a Tentative Subdivision Map for Lincoln Meadows Estates prepared by Benchmark Topographic.

43. During the period of December 19, 2004 to March 14, 2008, the Tehama County Planning Department received a tentative subdivision map for River View Estates and a tentative subdivision map for North Fork Estates prepared by Benchmark Topographic.

44. During the period of December 19, 2004 to March 14, 2008, Respondent provided services related to marking corners.

45. Respondent's application is subject to denial under section 480(d) of the Code in conjunction with Business and Professions Code sections 8726 and 8792(a) and (i) in that he solicited, procured, and/or managed a company while he was not licensed to perform

surveying services as evidenced by the subdivision maps filed with the Tehama County Planning Department and provided land surveying services such as marking corners.

46. On or about February 10, 2010, Respondent acting as president of Compass Consulting Corporation, submitted a proposal for Land Surveying services to D.L..

47. On or about March 16, 2010, as president of Compass Consulting Corporation, Respondent submitted a record of survey for Dean Lundie to the Tehama County Public Works Department.

48. Respondent's application is subject to denial under section 480(d) of the Code in conjuction with Business and Professions Code sections 8726 and 8792(a) and (i) in that he solicited, procured, and/or managed a company while he was not licensed to perform surveying services as evidenced by the proposal to D.L. and the record of Survey filed with the Tehama County Public Works Department.

PRAYER

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

1. Denying the application of Marcus Aaron Kinnee for a land surveyors license; and

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

DATED: Oct 11, 2012

Original Signed

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

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

In the Matter of the Statement of Issues Against: **MARCUS AARON KINNEE** **4765 Henleyville Road** **Corning, California 96021** Respondent.	Case No. 676-S **THIRD AMENDED STATEMENT OF ISSUES**

Complainant alleges:

1. David E. Brown ("Complainant") brings this ~~Second~~ Third/Sec Amended Accusation solely in his official capacity as the Executive Officer of the Board of Professional Engineers and Land Surveyors, Department of Consumer Affairs.

2. On or about December 10, 2006, Respondent, Marcus Aaron Kinnee ("Respondent") certified under penalty of perjury to the truthfulness of all statements, answers and representations in an Application for Examination for License as Professional Land Surveyor. The Board received Respondent's Application on January 3, 2007.

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STATE'S EXHIBIT
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3. The Application, question number 9, stated the following:

> 9. Have you ever been convicted of a criminal offense, including any misdemeanor, or entered a plea of *nolo contendere* other than for a minor traffic offense? Convictions dismissed under Penal Code section 1203.4 must be disclosed. If YES, explain fully under remarks on Page 2.

Respondent checked the YES box.

4. Page 2 of the Application, question number 13, stated as follows:

> 13. Remarks: Use this space for amplifying remarks, and for replies to questions above or on Page 1.

In response to question number 13, Respondent typed in the following:

> "In Regards to Section 9, Page 1, in 1997 i [sic] was convicted of felony use of another debt access card. In the past 9 years i [sic] have stayed clear and out of trouble. I have since Changed and turned my life around 360 degrees. I feel that i [sic] am a very capable, responsible and Ethical Candidate for this test. My hard work and References will prove that i [sic] will serve the community and the surveying profession in the Highest Regard."

5. On January 31, 2007, the Board sent Respondent a letter requesting certified copies of criminal complaints, information or indictment, plea and judgment and sentencing documents. Kinnee did provide all of the criminal court documents to the Board.

6. On April 2, 2007, the Board denied Respondent's application for licensure as a Land Surveyor, pursuant to Business and Professions Code section 480 and section 475.

7. After the denial of Licensure, on April 16, 2007, Respondent, through counsel, requested an appeal of the denial of application for a Land Surveyor's license.

II.

STATUTORY PROVISIONS

8. Land surveying is governed by the Professional Land Surveyors' Act, Business and Professions Code section 8700 *et. seq.* Land surveying is defined at section 8726 of the Business and Professions Code. Under section 8760 of the Business and Professions Code, a land surveyor may administer and certify oaths as set forth in the statute.

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9. Business and Professions Code section 8726 provides in pertinent part:

> A person, including any person employed by the state or by a city, county or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following: (i) Procures or offers to procure land surveying work for himself, herself, or others. (j) Manages or conducts as manager, or agent, any place of business from which land surveying work is solicited, performed or practiced. (k) Coordinates the work of professional, technical or special consultants in connection with the activities authorized by this chapter.

10. Business and Professions Code section 8792(a) and (i) provides in pertinent part that:

> Every person is guilty of a misdemeanor: (a) Who, unless he or she is exempt from licensing under this chapter, practices or offers to practice, land surveying in this state without legal authorization. (i) Who, unless appropriately licensed, mages or conducts as manager, proprietor or agent, any place of business from which land surveying work is solicited, performed, or practiced, except as authorized pursuant to Section 6731.2 and subdivision (d) of Section 8729. Business and Professions Code section 8726.

11. Penal Code section 242 states as follows:

§ 242. Battery defined:

> BATTERY DEFINED. A battery is any willful and unlawful use of force or violence upon the person of another.

12. Penal Code section 459 states as follows:

§ 459. Definition:

> Every person who enters any home, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent…with intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this chapter, "inhabited" means currently being used for dwelling purposes, whether occupied or not. A house, trailer, vessel designed for habitation, or portion of a building is currently being used for dwelling purposes if, at the time of the burglary, it was not occupied solely because a natural or other disaster caused the occupants to leave the premises.

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13. Penal Code section 484(b), states as follows:

§ 484(f). Forgery; access cards; design, alteration, or use:

(b) A person other than the cardholder or a person authorized by him or her who, with the intent to defraud, signs the name of another or of a fictitious person to an access card, sales slip, sales draft, or instrument for the payment of money which evidences an access card transaction, is guilty of forgery.

14. Penal Code section 485 states as follows:

§ 485. Theft: appropriation of lost property with knowledge of means of inquiry as to true owner.

One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just effort to find the owner and to restore the property to him, is guilty of theft.

15. Penal Code section 594(a) states as follows:

§ 594. Vandalism; penalty.

(a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti of other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, furnishings or property belonging to any public entity, as defined by section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage or destroy the property.

16. Business and Professions Code section 25658(a) states as follows:

§ 25658. Providing alcoholic beverages to persons under the age of 21: prohibition; criminal punishment; law enforcement decoys; additional punishment.

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(a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

17. Business and Professions Code section 480 states as follows:

§ 480. Acts disqualifying applicant.

(a) A Board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this Section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere.* Any action which a Board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(d) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The Board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business and profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the Board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 4825.

(c) A Board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

18. Business and Professions Code section 475(a), states as follows:

§ 475. Denial of licenses; grounds.

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

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(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

III.

GENERAL BACKGROUND

Conviction: Burglary

19. On April 8, 1992, Respondent unlawfully entered Pritchett's Market, a commercial building, with the intent to commit larceny and any felony. On April 13, 1992, in the County of Tehama, in the Justice Court of the Corning Judicial District, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. F92-18713C, was filed against Respondent alleging one count for violation of Penal Code section 459 [burglary].

On June 17, 1992, Respondent pled guilty to a misdemeanor under Penal Code section 459 and was placed on probation. Respondent violated probation in Case F92-18713C, by driving with a suspended license on December 8, 1992.

Conviction: Driving With a Suspended License

20. On December 9, 1992, Respondent drove with a suspended license, a violation of Vehicle Code section 14601.1(a). On December 12, 1992, in the Tehama County Municipal Court, Southern Division, a traffic citation (#2161) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR12892, was filed against Respondent alleging a violation of Vehicle Code section 14601.1(a).

On April 5, 1993, Respondent pled guilty to violating Vehicle Code section 14601.1(a) and was required to pay a fine of $840. On August 1, 1994, a bench warrant was ordered against Respondent for failure to pay the fine issued in Case No. SCR12892.

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Conviction: Speeding/Driving With a Suspended License/Failure to Pay Fine

21. On February 4, 1994, Respondent drove over the speed limit and drove with a suspended license. On February 16, 1994, in the Tehama County Municipal Court, Northern Division, a traffic citation (#WN53795), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR14400, was filed against Respondent alleging a violation of Vehicle Code section 22349 [speeding], Vehicle Code section 14601.1(a) [driving with a suspended license], and Vehicle Code section 40508(b) [failure to pay fines].

On March 28, 1994, Respondent pled guilty to violating Vehicle Code sections 22349, 14601.1(a). On December 9, 1994, a bench warrant was issued against Respondent for failure to pay the fine. On April 8, 1996, Respondent was convicted of Vehicle Code section 40508(b).

Conviction: Expired Registration

22. On April 28, 1994, Respondent drove a vehicle with an expired registration. On May 4, 1994, in the Tehama County Municipal Court, Northern Division, a traffic citation (#WN56163), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT106503, was filed against Respondent alleging a violation of Vehicle Code section 4000(e) [lack of registration].

On August 8, 1994, Respondent pled guilty to Vehicle Code section 4000(a).

Conviction: Expired Registration

23. On July 24, 1994, Respondent drove a vehicle with an expired registration. On July 25, 1994, in the Tehama County Municipal Court, Northern Division, a traffic citation (#WN73830), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT108459, was filed against Respondent alleging a violation of Vehicle Code section 4000(a) [lack of registration].

On September 12, 1994, Respondent pled guilty to Vehicle Code section 4000(a).

Conviction: Unlawful to Drive Without Being Licensed

On September 19, 1994, Respondent drove without a license and drove while his license was suspended. On October 1, 1994, in the Tehama County Municipal Court, Northern

Division, a traffic citation (#WN75372/WU76110), entitled, *The People of the State of California v. Marcus Aaron Kinnee,* Case No. NCR38624, was filed against Respondent alleging violations of Vehicle Code sections 12951(a), 4000(a), 14601 and 12500(a).

On November 16, 1994, Respondent pled guilty to Vehicle Code section 12500 [driving without being licensed].

Conviction: Driving With a Suspended License/Driving With Only Parking Lights

On April 30, 1997, Respondent drove with a suspended license and with only the parking lights on. On May 2, 1997, in the Tehama County Municipal Court, Southern Division, a traffic citation (#5420) entitled, *The People of the State of California v. Marcus Aaron Kinnee,* Case No. SCR17446, was filed against Respondent alleging violations of Vehicle Code section 14601.1(a), and section 24800 [driving with only parking lights].

On October 21, 1997, Respondent pled guilty to violating Vehicle Code section 146101.1(a) and section 24800.

Conviction: Expired Registration

25. Circa December 23, 1997, Respondent drove a vehicle with an expired registration. On December 24, 1997, in the Tehama County Municipal Court, Northern Division, a traffic citation (#6363), entitled *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST057388, was filed against Respondent alleging a violation of Vehicle Code section 4000(a) [lack of registration].

On March 10, 1998, Respondent pled guilty to Vehicle Code section 4000(a).

Conviction: Battery

26. On November 22, 1997, Respondent used force and violence against Christie S. and maliciously defaced with graffiti her real and personal property. On March 24, 1998, in the Municipal Court of the Tehama County Judicial District, County of Tehama, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee,* Case No. SCR18417, was filed against Respondent alleging violations of Penal Code section 594(a) [vandalism] and Penal Code section 242 [battery].

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On September 1, 1998, Respondent pled guilty to Penal Code section 242.

Conviction: Petty Theft of Lost Property

27. On March 14, 1998, Respondent stole personal property of John P. On May 27, 1998, in the Municipal Court of the Tehama County Judicial District, County of Tehama, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR18619, was filed against Respondent alleging violations of Penal Code section 484(a) [petty theft] and Penal Code section 485 [petty theft of lost property].

On September 1, 1998, Respondent pled guilty to violating Penal Code section 485 and was placed on probation with terms and conditions including payment of restitution to the victim. Respondent violated probation and failed to timely pay restitution.

Conviction: Vehicle Code

28. Circa March 29, 1998, Respondent drove without a license and failed to show proof of insurance. On March 31, 1998, in the Municipal Court of the Tehama County Judicial District, County of Tehama, a citation (#6308) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. STO58095, was filed against Respondent alleging violations of Vehicle Code sections 12500(b) and 16028(a).

On October 13, 1998, Respondent pled guilty to a violation of Vehicle Code sections 12500(b) and 16028(a).

On September 28, 2000, a bench warrant was ordered against Respondent in Case No. STO58095 for failure to obey a court order. On October 31, 2001, Respondent was convicted under Vehicle Code section 40508(b) [failure to pay a fine].

Conviction: Fraudulently Using Another's Access Card

29. Circa October 17, 1998, Respondent entered a commercial building occupied by Thomas Wulfert and Company with the intent to commit larceny. On October 19, 1998, Respondent fraudulently used another's access card, with the intent to defraud. On November 3, 1998, in the Superior Court, County of Tehama, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NCR48863, was filed against

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Respondent alleging violations of Penal Code sections 459 [burglary], 484f(b) [fraudulent use of another's access card].

On January 4, 1999, Respondent pled guilty to a violation of Penal Code section 484f(b).

Conviction: Driving Unregistered Car/Driving Without Proof of Insurance

30 Circa August 1, 1999, Respondent drove a car without registration and failed to provide evidence of insurance. On August 2, 1999, in the Superior Court, County of Tehama, a traffic citation (#66985) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT149970, was filed against respondent alleging violations of Vehicle Code sections 4000(a) and 16028(a).

On November 29, 1999, Respondent pled guilty to a violation of Vehicle Code sections 4000(a) and 16028(a). A bench warrant was issued on December 28, 2000 for Respondent's failure to comply with a court order.

Conviction: Illegally Passing a School Bus/No Car Insurance/Unregistered Car

31. Circa September 27, 1999, Respondent drove without proof of insurance, an unregistered car and illegally passed a school bus with its lights flashing. On September 29, 1999, in the Superior Court, County of Tehama, a traffic citation case (Nos. 7730 and 7727) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST065231, was filed against Respondent alleging violations of Vehicle Code sections 22454 [illegally passing a school bus with flashing lights], 4000(a) [unregistered vehicle] and 16028(a) [proof of financial responsibility].

On January 24, 2000, Respondent pled guilty to a violation of Vehicle Code sections 22454 and 16028(a). A bench warrant was issued on September 28, 2000, for Respondent's failure to comply with a court order.

Conviction: Violation of Promise to Appear/No Car Insurance

32. Circa November 20, 1999, Respondent drove without proof of insurance in an unregistered car. On November 22, 1999, in the Superior Court, County of Tehama, a citation (#8544) entitled *The People of the State of California v. Marcus Aaron Kinnee*, Case No.

ST066016, was filed against Respondent alleging violations of Vehicle Code sections 4000(a) [unregistered vehicle] and 16028(a) [proof of financial responsibility].

On January 24, 2000, Respondent pled guilty to a violation of Vehicle Code sections 4000(a) and 16028(a). A bench warrant was issued on September 28, 2000, for Respondent's failure to obey a court order.

Conviction: Furnishing Alcohol to a Minor

33. Circa January 2, 2004, Respondent furnished alcohol to a minor. On April 27, 2004, in the Superior Court, County of Tehama, a complaint entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR24225, was filed against Respondent alleging a violation of Business and Professions Code section 25658 [furnishing alcohol to a minor].

On April 27, 2004, Respondent pled guilty to Business and Profession Code section 25658, and was placed on probation for 24 months.

Conviction: Speeding

34. On July 27, 2005, Respondent drove over the speed limit. On July 29, 2005, in the Superior Court, County of Tehama, a citation (#41447VT) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST105998, was filed against Respondent alleging a violation of Vehicle Code section 22349 [excessive speed].

Because Respondent failed to attend traffic school or pay the fine, on November 4, 2005, a complaint was filed against Respondent for violating Vehicle Code section 40508(a). On February 8, 2007, Respondent was convicted of Vehicle Code sections 22349(b) and 40508(a).

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IV.

STATUTORY AUTHORITY

FIRST CAUSE FOR DENIAL OF APPLICATION

B & P Code § 480(a)(1)

(Convictions of Substantially Related Crimes)

35. Paragraphs 17 through 33 are incorporated herein by reference. Respondent's application is subject to denial under Section 480(a)(1) of the Code, in that Respondent was convicted of the following crimes:

a. On June 17, 1992, in the case entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. F92-18713C, Respondent was convicted under Penal Code section 459 [burglary].

b. On April 5, 1993, in the traffic citation case (#2161) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR12892, Respondent was convicted of violating Vehicle Code section 14601.1(a) [driving with a suspended license].

c. On March 28, 1994, in the traffic citation case (#WN53795), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR14400, Respondent was convicted of violating Vehicle Code sections 22349 [speeding], 146101.(a) [driving with a suspended license]. On April 8, 1996, Respondent was convicted of Vehicle Code section 40508(a) [failure to pay fine].

d. On August 8, 1994, in the traffic citation case (#WN56163), entitled *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT106503, Respondent was convicted for a violation of Vehicle Code section 4000(a) [lack of registration].

e. On September 12, 1994, in the traffic citation case (#WU73830), entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT108459, Respondent was convicted for a violation of Vehicle Code section 4000(a) [lack of registration].

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f. On November 16, 1994, in the traffic citation case (#WU75372/WU76110), entitled *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NCR38624, Respondent was convicted for a violation of Vehicle Code section 12500 [driving without being licensed].

g. On October 21, 1997, in the traffic citation case (#5420) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR17446, Respondent was convicted for violating Vehicle Code section 146101.1(a), and section 24800 [driving with only parking lights].

h. On March 10, 1998, in the traffic citation case (#6363) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST057388, Respondent was convicted of violating Vehicle Code section 4000(a) [lack of registration].

i. On September 1, 1998, in case entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR18417, Respondent was convicted of violating Penal Code section 242 [battery].

j. On September 1, 1988, in the case entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR18619, Respondent was convicted for violating Penal Code section 485 [petty theft of lost property].

k. On October 13, 1998, in the citation case (36308) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST058095, Respondent was convicted of violating Vehicle Code sections 12500(b) and 16028(a), and placed on probation. Due to Respondent's failure to pay the fine, he was convicted on October 31, 2001 under Vehicle Code section 40508(b) [failure to pay a fine].

l. On January 4, 1999, in the case entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NCR48863, Respondent was convicted of violation of Penal Code section 484f(b) [fraudulent use of another's access card].

m. On November 29, 1999, in the traffic citation case (#66985) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. NT 149970, Respondent was convicted of violating Vehicle Code sections 4000(a) and 16028(a).

n. On January 24, 2000, in the traffic citation case (Nos. 7730 and 7727) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST065231, Respondent was convicted of violating Vehicle Code sections 22454 [illegally passing a school bus with flashing lights], and 16028(a) [failure to show proof of financial responsibility].

o. On January 24, 2000, in the traffic citation case (#8544) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST066016, Respondent was convicted of violating Vehicle Code sections 40508(a) [violation of promise to appear] and 16028(a) [proof of financial responsibility].

p. On April 27, 2004, in the case entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. SCR24225, Respondent was convicted of violating Business and Professions Code section 25658 [furnishing alcohol to a minor].

q. On February 8, 2007, in the traffic citation case (#41447VT) entitled, *The People of the State of California v. Marcus Aaron Kinnee*, Case No. ST105998, Respondent was convicted of violating Vehicle Code section 22349 [excessive speed] and Vehicle Code section 40508(a) [failure to pay fines].

36. The above referenced convictions are substantially related to the qualifications, functions and duties of a licensed land surveyor. The convictions for burglary, petty theft, providing alcohol to minors, fraudulent use of another's access card, illegally passing a school bus, and myriad of traffic violations and repeated failure to comply with the terms of criminal probation all evidence a total disregard for law and order. Land surveyors are required to comply with numerous ordinances, laws, custom and practice and are required to administer and certify oaths (Business and Professions Code section 8760). Additionally, the license of a land surveyor allows a land surveyor to sign with their seal or stamp to truth and veracity of maps, plans, reports, descriptions or other documents. Respondent's conduct over the past 15 years shows an utter lack of concern for the public health, safety and welfare.

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SECOND CAUSE FOR DENIAL OF APPLICATION

B & P § 480(a)(2)

(Acts Involving Dishonesty, Fraud or Deceit)

37. Respondent's application is subject to denial under section 480(a)(2) of the Code, due to committing the following acts involving dishonesty, fraud or deceit with the intent to substantially benefit himself:

a. Committing burglary on April 8, 1992.

b. Stealing personal property of John P. on March 14, 1998.

c. Fraudulently using another's access card on October 19, 1998 and October 21, 1998.

d. Making false material misrepresentations on his license application.

THIRD CAUSE FOR DENIAL OF APPLICATION

B & P § 480(a)(3)

(Act, if Committed by a Licensee, Which Would be Grounds)

(for Suspension or Revocation of a Licensee)

38. Paragraphs 2 through 4, and 19 through 34 are incorporated herein by reference. Respondent's application is subject to denial under section 480(a)(3) of the Code, in that he committed acts and was convicted of crimes as set forth in paragraph 38 above, which if done by a licentiate, would constitute grounds for suspension or revocation of a license under sections 8780(b), 8780(d), 8792(d) and 490 of the Business and Professions Code.

FOURTH CAUSE FOR DENIAL OF APPLICATION

B & P Code § 480(c)

(False Statement/Omissions of Facts on Application)

39. Paragraphs 2 through 4, and 35 are incorporated herein by reference. Respondent's application is subject to denial under section 480(c) of the Code in that he knowingly made a false statement, or knowingly omitted stating facts required to be revealed in his January 3, 1997 application for a land surveyor.

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40. Respondent failed to disclose his criminal convictions, as set forth in paragraph 38 above. More specifically, Respondent failed to disclose the following: (1) his 1992 conviction for burglary; (2) his 1997 conviction for battery; (3) his 1998 conviction for petty theft; (4) his 1999 conviction for fraudulently using another's access card; (5) his 2004 conviction for furnishing alcholol to a minor; (6) his numerous vehicle code violations ; and (7) his repeated convictions for failure to comply with numerous criminal probations arising out of vehicle code violations. Instead, to reiterate, Respondent made the following representation in his application as to his criminal conviction record:

> In Regards to Section 9 Page 1, in 1997 i was convicted of felony use of another debt access card. In the past 9 years i have stayed clear and out of trouble. I have since Changed and turned my life around 360 degrees. I feel that i am a very capable, responsible and Ethical Candidate for this test. My hard work and References will prove that i will serve the community and the surveying profession in the Highest Regard.

FIFTH CAUSE FOR DENIAL OF APPLICATION

B & P Code § 480(d)

(Unlicensed Activity)

41. From approximately December 19, 2004 to March 8, 2008, Respondent owned and operated Benchmark Topographics.

42. On or about July 12, 2006, the Tehama County Planning Department received a Tentative Subdivision Map for Lincoln Meadows Estates prepared by Benchmark Topographic.

43. During the period of December 19, 2004 to March 14, 2008, the Tehama County Planning Department received a tentative subdivision map for River View Estates and a tentative subdivision map for North Fork Estates prepared by Benchmark Topographic.

44. During the period of December 19, 2004 to March 14, 2008, Respondent provided services related to marking corners.

45. Respondent's application is subject to denial under section 480(d) of the Code in conjunction with Business and Professions Code sections 8726 and 8792(a) and (i) in that he solicited, procured, and/or managed a company while he was not licensed to perform

surveying services as evidenced by the subdivision maps filed with the Tehama County Planning Department and provided land surveying services such as marking corners.

46. On or about February 10, 2010, Respondent acting as president of Compass Consulting Corporation, submitted a proposal for Land Surveying services to D.L..

47. On or about March 16, 2010, as president of Compass Consulting Corporation, Respondent submitted a record of survey for Dean Lundie to the Tehama County Public Works Department.

47(a). Respondent doing buisness as Benchmark Topographics was guilty of unlicensed practice in preparing and submitting the following documents:

a) the documents pertaining to Mitten Ranch Estates.

b) the documents pertaining to California Family Foods.

48. Respondent's application is subject to denial under section 480(d) of the Code in conjuction with Business and Professions Code sections 8726 and 8792(a) and (i) in that he solicited, procured, and/or managed a company while he was not licensed to perform surveying services as evidenced by the proposal to D.L. and the record of Survey filed with the Tehama County Public Works Department.

PRAYER

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

1. Denying the application of Marcus Aaron Kinnee for a land surveyors license; and

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

DATED: _____

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

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