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

13 In the Matter of the Accusation Against:

Case No. 983-A

14 OAH No. 2012110724

15 **JOHN WURTZ**
16 **1066 West 13th Street**
17 **Upland, CA 91786**
18 **Civil Engineer License No. C 24263**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

19 Respondent.

20
21 **FINDINGS OF FACT**

22 1. On or about May 9, 2011, Joanne Arnold, in her then-official capacity as Interim
23 Executive Officer of the Board for Professional Engineers, Land Surveyors, and Geologists,
24 Department of Consumer Affairs, filed Accusation No. 983-A against John Wurtz (Respondent)
25 before the Board for Professional Engineers, Land Surveyors, and Geologists. (Accusation
26 attached as Exhibit A.).

27 2. Richard P. Moore, P.L.S. is now the Executive Officer of the Board and is the
28 Complainant in this matter. He is acting in this matter in his official capacity.

1 3. On or about June 12, 1974, the Board for Professional Engineers, Land Surveyors,
2 and Geologists (Board) issued Civil Engineer License No. C 24263 to Respondent. The Civil
3 Engineer License was in full force and effect at all times relevant to the charges brought in
4 Accusation No. 983-A. The license subsequently expired on December 31, 2011 and was not
5 renewed. This lapse in licensure, however, does not deprive the Board of its authority to institute
6 or continue this disciplinary proceeding under Business and Professions Code section 118
7 subdivision (b).

8 4. On or about May 26, 2011, Respondent was served by Certified and First Class Mail
9 copies of the Accusation No. 983-A, Statement to Respondent, Notice of Defense, Request for
10 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
11 Respondent's address of record which, pursuant to Business and Professions Code section 136, is
12 required to be reported and maintained with the Board. Respondent's address of record was and
13 is: 1066 West 13th Street, Upland, CA 91786.

14 5. Service of the Accusation was effective as a matter of law under the provisions of
15 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
16 124.

17 6. On or about June 9, 2011, Respondent signed and returned a Notice of Defense,
18 requesting a hearing in this matter.

19 7. A Notice of Hearing was served by mail at Respondent's address of record and it
20 informed him that an administrative hearing in this matter was scheduled for February 26, 2013.
21 Respondent failed to appear at that hearing.

22 8. Government Code section 11506 states, in pertinent part: "(c) The respondent shall
23 be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice
24 shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to
25 file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency
26 in its discretion may nevertheless grant a hearing."

27 9. Government Code section 11520 states, in pertinent part: "(a) If the respondent either
28 fails to file a notice of defense or to appear at the hearing, the agency may take action based upon

1 the respondent's express admissions or upon other evidence and affidavits may be used as
2 evidence without any notice to respondent."

3 10. Pursuant to its authority under Government Code section 11520, the Board finds
4 Respondent is in default. The Board will take action without further hearing and, based on the
5 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
6 taking official notice of all the investigatory reports, exhibits and statements contained therein on
7 file at the Board's offices regarding the allegations contained in Accusation No. 983-A, finds that
8 the charges and allegations in Accusation No. 983-A, are separately and severally, found to be
9 true and correct by clear and convincing evidence.

10 11. Taking official notice of its own internal records, pursuant to Business and
11 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
12 and Enforcement is \$2,270.00 as of February 26, 2013.

13 DETERMINATION OF ISSUES

14 1. Based on the foregoing findings of fact, Respondent John Wurtz has subjected his
15 Civil Engineer License No. C 24263 to discipline.

16 2. The agency has jurisdiction to adjudicate this case by default.

17 3. The Board for Professional Engineers, Land Surveyors, and Geologists is authorized
18 to revoke Respondent's Civil Engineer License based upon the following violations alleged in the
19 Accusation which are supported by the evidence contained in the Default Decision Evidence
20 Packet in this case:

21 a. Business and Professions Code sections 125.9 (failure to pay fine), Business and
22 Professions Code section 8780 subdivision (d) (violation of statutes pertaining to land surveying),
23 Business and Professions Code section 8780 subdivision (h) (violation of rule or regulation of
24 professional conduct) and California Code of Regulations Title 16 section 476 (rule of
25 professional conduct requiring licensees to follow statutes or regulations) for failing to comply
26 with two citations issued in February 2008. These citations ordered him to pay administrative
27 fines and ordered him to correct violations of the Land Surveyors Act by filing records of survey
28 for two properties. He did not pay the fines or comply with the citation orders.

ORDER

IT IS SO ORDERED that Civil Engineer License No. C 24263, heretofore issued to Respondent John Wurtz, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on May 24, 2013.

It is so ORDERED April 18, 2013

Original Signed

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

51267220.DOC
DOJ Matter ID: LA2011600415

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 GEOFFREY WARD
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7 Attorneys for Complainant

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10 **GEOLOGISTS**
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13 In the Matter of the Accusation Against:

Case No. 983-A

14 **JOHN WURTZ**

15 **1066 West 13th Street**
16 **Upland, CA 91786**

A C C U S A T I O N

17 **Civil Engineer License No. C 24263**

Respondent.

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about June 12, 1974, the Board for Professional Engineers, Land Surveyors,
24 and Geologists issued Civil Engineer License Number C 24263 to John Wurtz ("Respondent").
25 The Civil Engineer License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on December 31, 2011, unless renewed.
27
28

JURISDICTION

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

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 8731 subjects civil engineers practicing land surveying to the same duties and responsibilities as a licensed land surveyor:

"A registered civil engineer and a civil engineer exempt from registration under Chapter 7 (commencing with Section 6700) of Division 3 are exempt from licensing under this chapter and may engage in the practice of land surveying with the same rights and privileges, and the same duties and responsibilities of a licensed land surveyor, provided that for civil engineers who become registered after January 1, 1982, they shall pass the second division examination provided for in Section 8741 and obtain a land surveyor's license, before practicing land surveying as defined in this chapter."

STATUTES

6. Section 125.9 allows the Board to adopt regulations for a system of issuing citations and allows the Board to discipline licensees for failing to pay administrative fines in citations:

"(a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), and Chapter 11.6 (commencing with Section 7590) of Division 3, any board, bureau, or commission within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

1 (3) In no event shall the administrative fine assessed by the
2 board, bureau, or commission exceed five thousand dollars (\$5,000) for each
3 inspection or each investigation made with respect to the violation, or five
4 thousand dollars (\$5,000) for each violation or count if the violation involves
5 fraudulent billing submitted to an insurance company, the Medi-Cal
6 program, or Medicare. In assessing a fine, the board, bureau, or commission
7 shall give due consideration to the appropriateness of the amount of the fine
8 with respect to factors such as the gravity of the violation, the good faith of
9 the licensee, and the history of previous violations.

10 (4) A citation or fine assessment issued pursuant to a citation
11 shall inform the licensee that if he or she desires a hearing to contest the
12 finding of a violation, that hearing shall be requested by written notice to the
13 board, bureau, or commission within 30 days of the date of issuance of the
14 citation or assessment. If a hearing is not requested pursuant to this section,
15 payment of any fine shall not constitute an admission of the violation
16 charged. Hearings shall be held pursuant to Chapter 5 (commencing with
17 Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

18 (5) Failure of a licensee to pay a fine within 30 days of the date
19 of assessment, unless the citation is being appealed, may result in
20 disciplinary action being taken by the board, bureau, or commission. Where
21 a citation is not contested and a fine is not paid, the full amount of the
22 assessed fine shall be added to the fee for renewal of the license. A license
23 shall not be renewed without payment of the renewal fee and fine.

24 (c) The system may contain the following provisions:

25 (1) A citation may be issued without the assessment of an
26 administrative fine.

27 (2) Assessment of administrative fines may be limited to only
28 particular violations of the applicable licensing act.

(d) Notwithstanding any other provision of law, if a fine is paid to
satisfy an assessment based on the finding of a violation, payment of the fine shall be
represented as satisfactory resolution of the matter for purposes of public disclosure.

(e) Administrative fines collected pursuant to this section shall be
deposited in the special fund of the particular board, bureau, or commission.

7. Section 8780 in relevant part allows the Board to discipline licensed land surveyors
and civil engineers for violating laws relating to land surveying or for violating the Board's rules
or regulations of unprofessional conduct:

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

By a majority vote, the board may reprove, suspend for a period not to exceed two
years, or revoke the license or certificate of any licensed land surveyor or registered
civil engineer, respectively, licensed under this chapter [Chapter 15, Business and
Professions Code sections 8700 – 8805] or registered under the provisions of
Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:

1 ...
2 (d) Any violation of any provision of this chapter [Chapter 15,
3 Business and Professions Code sections 8700 – 8805] or of any other law relating
4 to or involving the practice of land surveying.

5 ...
6 (h) A violation in the course of the practice of land surveying of a rule
7 or regulation of unprofessional conduct adopted by the board."

8
9 8. Section 8759 requires the use of a written contract when providing land surveying
10 services to a client:

11 (a) A licensed land surveyor or registered civil engineer authorized to practice land
12 surveying shall use a written contract when contracting to provide professional
13 services to a client pursuant to this chapter. The written contract shall be executed
14 by the licensed land surveyor or registered civil engineer and the client, or his or
15 her representative, prior to the licensed land surveyor or registered civil engineer
16 commencing work, unless the client knowingly states in writing that work may be
17 commenced before the contract is executed. The written contract shall include, but
18 not be limited to, all of the following:

19 (1) A description of the services to be provided to the client by the
20 licensed land surveyor or registered civil engineer.

21 (2) A description of any basis of compensation applicable to the
22 contract, and the method of payment agreed upon by the parties.

23 (3) The name, address, and license or certificate number of the licensed
24 land surveyor or registered civil engineer, and the name and address of the client.

25 (4) A description of the procedure that the licensed land surveyor or
26 registered civil engineer and the client will use to accommodate additional services.

27 (5) A description of the procedure to be used by any party to terminate
28 the contract.

(b) This section shall not apply to any of the following:

(1) Professional land surveying services rendered by a licensed land
surveyor or registered civil engineer for which the client will not pay
compensation.

(2) A licensed land surveyor or registered civil engineer who has a
current or prior contractual relationship with the client to provide professional
services pursuant to this chapter, and that client has paid the surveyor or engineer
all of the fees that are due under the contract.

(3) If the client knowingly states in writing after full disclosure of this
section that a contract which complies with the requirements of this section is not
required.

(4) Professional services rendered by a licensed land surveyor or a
registered civil engineer to any of the following:

1 (A) A professional engineer licensed or registered under Chapter 7
(commencing with Section 6700).

2 (B) A land surveyor licensed under this chapter.

3 (C) An architect licensed under Chapter 3 (commencing with Section
4 5500).

5 (D) A contractor licensed under Chapter 9 (commencing with Section
6 7000).

7 (E) A geologist or a geophysicist licensed under Chapter 12.5
(commencing with Section 7800).

8 (F) A manufacturing, mining, public utility, research and development,
9 or other industrial corporation, if the services are provided in connection with or
10 incidental to the products, systems, or services of that corporation or its affiliates.

11 (G) A public agency.

12 (c) 'Written contract' as used in this section includes a contract that is in electronic
13 form."

14 9. Section 8762 specifies in relevant part when records of surveys must be filed:

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

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

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

(2) A material discrepancy with the information contained in any
subdivision map, official map, or record of survey previously recorded or filed in the
office of the county recorder or the county surveying department, or any map or
survey record maintained by the Bureau of Land Management of the United States.
For purposes of this subdivision, a "material discrepancy" is limited to a material
discrepancy in the position of points or lines, or in dimensions.

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

(4) The establishment of one or more points or lines not shown on any

1 subdivision map, official map, or record of survey, the positions of which are not
2 ascertainable from an inspection of the subdivision map, official map, or record of
3 survey.

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

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

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

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

26 10. Section 8766 requires county surveyors to examine surveys submitted to them for
27 accuracy and for compliance with surveying laws.

28 11. Section 8767 requires licensees to resubmit a record of survey if the county surveyor
returns the record of survey with a written statement of changes necessary to make it comply with
the surveying laws:

"If the county surveyor finds that the record of survey complies with the
examination in Section 8766, the county surveyor shall endorse a statement on it of
his or her examination, and shall present it to the county recorder for filing. Otherwise
the county surveyor shall return it to the person who presented it, together with a
written statement of the changes necessary to make it conform to the requirements of
Section 8766. The licensed land surveyor or registered civil engineer submitting the
record of survey may then make the agreed changes and note those matters which
cannot be agreed upon in accordance with the provisions of Section 8768 and shall
resubmit the record of survey within 60 days, or within the time as may be mutually
agreed upon by the licensed surveyor or registered engineer and the county surveyor,
to the county surveyor for filing pursuant to Section 8768."

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REGULATIONS

12. Section 473 of Title 16 of the California Code of Regulations allows the Board to issue citations to licensees who violate any provision of law enforced by the Board:

“(a) The Executive Officer or his or her designee may issue a citation for any violation of any provision of law enforced by the Board to any person who holds a license issued by the Board.

(b) Prior to the issuance of a citation in any case involving allegations of negligence and/or incompetence, as defined in Section 404, in the professional practice, the Executive Officer shall submit the alleged violation for review to at least one licensee of the Board who is competent in the branch of professional engineering or professional land surveying most relevant to the subject matter of the citation. The licensee reviewing the alleged violation shall be either a member of the Board’s professional staff, a technical advisory committee member, or an expert consultant. Upon conclusion of the review, the reviewer shall prepare a finding of fact and a recommendation based upon that finding to which the Executive Officer shall give due consideration in determining whether cause exists to issue a citation.

(c) Each citation

(1) shall be in writing;

(2) shall describe with particularity the nature of the violation, including specific reference to the provision or provisions of law determined to have been violated;

(3) may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement;

(4) shall be served on the cited person at the address of record on file with the Board personally or by certified mail with return receipt requested;

(5) shall inform the cited person that failure to pay the fine within 30 calendar days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the Board. If a citation is not contested and the fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without the payment of the renewal fee and fine;

(6) shall inform the cited person that, if he/she desires an informal conference to contest the finding of a violation, the informal conference shall be requested by written notice to the Board within 30 calendar days from service of the citation;

(7) shall inform the cited person that, if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the Board within 30 calendar days from service of the citation.”

13. Section 473.3 of Title 16 of the California Code of Regulations allows for the appeal of citations within 30 calendar days of service of a citation:

1 “(a) Any person served with a citation issued pursuant to Section 473
2 may contest the citation by submitting a written request for a hearing to the Board
3 within 30 calendar days of service of the citation. Such hearings shall be conducted
4 pursuant to the Administrative Procedure Act, Chapters 4.5 and 5, commencing with
5 Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

6 (b) In addition to requesting a hearing as described in subsection (a), the
7 cited person may, within 30 calendar days of service of the citation, submit a written
8 request for an informal conference with the Executive Officer.

9 (c) The Executive Officer shall, within 30 working days of receipt of a
10 written request for an informal conference as provided in subsection (b), hold an
11 informal conference with the cited person and/or his or her legal counsel or
12 authorized representative. The 30- day period may be extended by the Executive
13 Officer for good cause. Following the informal conference, the Executive Officer
14 may affirm, modify, or dismiss the citation, including any administrative fine
15 assessed or order of abatement issued. An order affirming, modifying, or dismissing
16 the original citation shall be served on the cited person within 30 calendar days from
17 the informal conference. Said order shall state in writing the reasons for the
18 affirmation, modification, or dismissal of the original citation. If the order affirms or
19 modifies the original citation, said order shall fix a reasonable period of time for
20 abatement of the violation or payment of the fine.

21 Service of this order shall be made as provided in Section 473. This order
22 shall be considered the conclusion of the informal conference proceedings.

23 (d) If the citation is affirmed or modified following the informal
24 conference, the cited person may request a hearing as provided in subsection (a)
25 within 30 calendar days from service of the order described in subsection (c). The
26 cited person shall not be permitted to request another informal conference.

27 (e) If the citation is dismissed after the informal conference, the request
28 for a hearing, if any, shall be deemed to be withdrawn.

 (f) Submittal of a written request for a hearing as provided in subsection
(a), an informal conference as provided in subsection (b), or both stays the time
period in which to abate the violation and/or to pay the fine.

 (g) If the written request for a hearing as provided in subsection (a) or an
informal conference as provided in subsection (b) or both is not submitted within 30
calendar days from service of the citation, the cited person is deemed to have waived
his/her right to a hearing or an informal conference.”

14. Section 473.3 of Title 16 of the California Code of Regulations allows the Board to
discipline licensees who fail to comply with citations:

 “(a) If a cited person who has been issued an order of abatement is unable
to complete the correction within the time set forth in the citation because of
conditions beyond his/her control after the exercise of reasonable diligence, then
he/she may request from the Executive Officer an extension of time within which to
complete the correction. Such a request shall be in writing and shall be made within
the time set forth for abatement.

 (b) Failure of the cited person to abate the violation or to pay the fine
within the time allowed is grounds for suspension or revocation of the cited person’s

1 license.

2 (c) If the cited person fails to pay all of the fine within the time allowed,
3 the balance due for the fine shall be added to the renewal fee for the license, and the
4 license shall not be renewed until the fine is paid in full.

5 (d) If a hearing as provided in Section 473.2(a) is not requested, payment
6 of the fine shall not constitute an admission of the violation charged.

7 (e) Payment of the fine shall be represented as satisfactory resolution of
8 the matter for purposes of public disclosure.”

9 15. Section 476 of Title 16 of the California Code of Regulation sets forth the Code of
10 Professional Conduct for Professional Land Surveying (“Code of Professional Conduct”). It also
11 provides that a professional civil engineer’s or land surveyor’s violation of this Code of
12 Professional Conduct constitutes unprofessional conduct and is grounds for disciplinary action
13 pursuant to Section 8780 of the Code. Subdivision (a) of the Code of Professional Conduct
14 requires licensees to “provide professional services for a project in a manner that is consistent
15 with the laws, codes, ordinances, rules, and regulations applicable to that project.”

16 COST RECOVERY

17 16. Section 125.3 provides, in pertinent part, that the board may request the
18 administrative law judge to direct a licensee found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case.

21 STATEMENT OF FACTS

22 17. On or about February 28, 2008, the then-Executive Officer of the Board properly
23 served two written citations upon Respondent John Wurtz.

24 18. The first citation served that day, Citation 5245-L, ordered Respondent to cease and
25 desist from violating Business and Professions Code section 8762 subdivision (c) (record of
26 survey shall be filed within 90 days after setting monuments during or completing of a field
27 survey) and ordered him to pay a \$1,000 administrative fine within 30 days of the date the
28 citation became final. (Citation 5245-L is attached as Exhibit A and incorporated herein by this
reference).

1 19. Citation 5245-L described in particularity the nature of Respondent's violation of
2 surveying laws. It stated he had performed land surveying work on a property identified as Block
3 10, San Antonio Park Tract, Lot 4, 5, and 5, in the City of Upland in San Bernardino County and
4 had prepared a document entitled a "verification of property corners," rather than filing a record
5 of survey with the County Land Surveyors Office, as required by Section 8762(c). It included the
6 text of section 8762, with subdivision (c) highlighted in bold.

7 20. Citation 5245-L ordered Respondent to submit to the San Bernardino Surveyors
8 Office a record of survey for the property in Upland, and ordered him to submit proof that he had
9 done so to the Board within 30 days of the date the citation became final. It also included
10 information describing his right to appeal the citation, and a notice of appeal form.

11 21. Respondent did not appeal Citation 5245-L.

12 22. Respondent did not pay the administrative fine of \$1,000 as required by Citation
13 5245-L.

14 23. Respondent did not obey the order of abatement in Citation 5245-L by submitting a
15 record of survey for the identified property in Upland to the County Surveyor, despite multiple
16 requests from the County Surveyor's office and the Board to do so.

17 24. The second citation served that day, Citation 5246-L, ordered Respondent to cease
18 and desist from violating Business and Professions Code sections 8759 (written contract
19 requirements), 8762 subdivision (c) (record of survey shall be filed within 90 days after setting
20 monuments during or completing of a field survey), and 8767 (resubmittal of record of survey
21 after county surveyor returns it with statement of changes needed). It also ordered him to pay a
22 \$1,000 administrative fine within 30 days of the date the citation became final. (Citation 5246-L
23 is attached as Exhibit B and incorporated herein by this reference).

24 25. Citation 5246-L described in particularity the nature of Respondent's violation of
25 surveying laws. It stated Respondent had performed land surveying work on a property identified
26 as San Bernardino County Record of Survey number 05-403, a property located between F and G
27 Streets facing Monte Vista in the City of Chino in San Bernardino County, failed to timely file
28 the record of survey for that property, and, after the record of survey was returned to him by the

1 County Surveyor's Office for correction, failed to timely resubmit the record of survey, in
2 violation of sections 8762 subdivision (c) and section 8767. It also alleged Respondent failed to
3 use a written contract for his surveying project as required by section 8759. It included the text of
4 sections 8759, 8762, and 8767.

5 26. Citation 5246-L ordered Respondent to resubmit to the San Bernardino Surveyors
6 Office a corrected record of survey for the property in Chino and ordered him to submit proof that
7 he had done so to the Board within 30 days of the date the citation became final. It also included
8 information describing his right to appeal the citation, and a notice of appeal form.

9 27. Respondent did not appeal Citation 5246-L.

10 28. Respondent did not pay the administrative fine of \$1,000 as required by Citation
11 5246-L.

12 29. Respondent did not obey the order of abatement in Citation 5246-L by resubmitting a
13 corrected record of survey for the identified property in Chino to the County Surveyor, despite
14 requests from the County Surveyor's office and the Board to do so.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Failure to Pay Fine or Follow Abatement Order – Citation 5245-L)**

17 30. Respondent is subject to disciplinary action under section 125.9 subdivision (b)
18 (failure to pay fine), section 8780 subdivision (d) (violation of statutes pertaining to land
19 surveying), section 8780 subdivision (h)(violation of rule or regulation or professional conduct)
20 as well as Title 16 section 473.3 subdivision (b) (failure to pay fine or abate violation) and Title
21 16 section 476 (rule for professional conduct requiring licensee to follow statutes and regulations)
22 for committing the acts set forth in particularity in paragraphs 17 through 23, above, incorporated
23 and realleged herein by this reference. Specifically, Respondent (1) failed to pay the
24 administrative fine of \$1,000 imposed by Citation 5245-L and (2) failed to abate the violation of
25 section 8762(c) by filing a proper record of survey with the San Bernardino County Land
26 Surveyor's office for the Upland property as ordered by Citation 5245-L.

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SECOND CAUSE FOR DISCIPLINE

(Failure to Pay Fine or Follow Abatement Order – Citation 5246-L)

31. Respondent is subject to disciplinary action under section 125.9 subdivision (b) (failure to pay fine), section 8780 subdivision (d) (violation of statutes pertaining to land surveying), section 8780 subdivision (h) (violation of rule or regulation or professional conduct) as well as Title 16 section 473.3 subdivision (b) (failure to pay fine or abate violation) and Title 16 section 476 (rule for professional conduct requiring licensee to follow statutes and regulations) by committing the acts set forth in particularity in paragraph 17 and paragraphs 24 through 29 above, incorporated and realleged herein by this reference. Specifically, Respondent (1) failed to pay the administrative fine of \$1,000 imposed by Citation 5246-L and (2) failed to abate the violation of sections 8762(c) and 8767 by filing a corrected record of survey with the San Bernardino County Land Surveyor's office for the Chino property as ordered by Citation 5246-L and failed to abate the violation of section 8759 by entering into a written contract with his client as described by Citation 5246-L.

PRAYER

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

1. Revoking or suspending Civil Engineer License Number C 27617, issued to John Wurtz;
2. Ordering John Wurtz to pay the Board for Professional Engineers, Land Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 5/19/11

Original Signed

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

LA2011600415
50894978.docx

Exhibit A

Citation Order 5245-L Issued to Respondent John Wurtz on February 28, 2008



DECLARATION OF CUSTODIAN OF RECORDS

I, **NANCY A. EISSLER**, state:

I am the Enforcement Program Manager of the Board for Professional Engineers, Land Surveyors, and Geologists, and in that capacity am the duly authorized custodian of the records of that Board, and make this certification pursuant to that authority.

I certify that the attached document is a true and correct copy of Citation Order 5245-L issued to John Wurtz. This record is maintained by the Board for Professional Engineers, Land Surveyors, and Geologists in the normal course of its official business and was submitted to the Board at the time and in the manner prescribed by law.

I declare under penalty of perjury that the foregoing is true and correct. Executed this twenty-third day of March, 2011, at Sacramento, California.

Original Signed

NANCY A. EISSLER
Enforcement Program Manager





BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
2535 Capitol Oaks Drive, Suite 300, Sacramento, CA 95833-2944
Telephone: (916) 263-2222 Toll Free: 1-866-780-8370
Facsimile: (916) 263-2246
www.dca.ca.gov/pels



CITATION ORDER

5245 - L

ISSUED TO

JOHN WURTZ
1066 W 13th Street
Upland, CA 91786

ON FEBRUARY 28, 2008

BOARD CASE 2002-08-177

CINDI CHRISTENSON, in her official capacity as the Executive Officer for the Board for Professional Engineers and Land Surveyors (hereinafter referred to as the "Board"), issues this citation in accordance with Title 16, Division 5, California Code of Regulation section 473 for the violation(s) described below.

ORDER OF ABATEMENT

The Board hereby orders you to immediately cease and desist from violating Business and Professions Code section 8759 and 8762(c) and also orders you to submit to the San Bernardino Surveyors Office a Record of Survey for property identified as Block 10, San Antonio Park Tract, Lot 4, 5, and 6, City of Upland, San Bernardino County, California, and submit proof to the Board of submitted survey to the County of San Bernardino Surveyor's Office within 30 days of the date the citation becomes final.

ORDER TO PAY ADMINISTRATIVE FINE

The Board hereby orders you to pay an administrative fine in the amount of \$1000.00 as provided for by Title 16, Division 5, Section 473.1(c) of the California Code of Regulations for the violation of Section 8762(c) of the Business and Professions Code, within 30 days of the date the citation becomes final.

Licensing History

The records of the Board show that on June 12, 1974, the Board issued a Civil Engineer license, number C 24263 to John Wurtz; license number C 24263 expires on December 31, 2009, unless renewed.

Cause for Citation

An investigation, including a review by at least one licensee of the Board who is competent in the branch of professional engineering or professional land surveying most relevant to the subject matter, determined that you have violated Business and Professions Code section 8762(c) in that you performed land surveying work on a property identified as Block 10, San Antonio Park Tract, Lot 4, 5, and 6, City of Upland, San Bernardino County, California and prepared a document you titled "verification of property corners", which required a Record of Survey be prepared and filed with the County Land Surveyors Office.

8762. Records of survey

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

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

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

(2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

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

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

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

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

(d) (1) If the 90-day time limit contained in subdivision (c) cannot be complied with for reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day time period shall be extended until the time at which the reasons for delay are eliminated. If the licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter stating that he or she is unable to comply. The letter shall provide an estimate of the date

for completion of the record of survey, the reasons for the delay, and a general statement as to the location of the survey, including the assessor's parcel number or numbers.

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

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

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

Payment Information

Payment of any fine shall not constitute an admission of the violation charged. (Business and Professions Code section 125.9(b)(4)) Where a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure. (B & P 125.9(d).) Payment of the administrative fine should be made to the Board for Professional Engineers and Land Surveyors, 2535 Capitol Oaks Drive, Suite 300, Sacramento, CA, 95833-2926.

Appeal and Compliance Information

Unless appealed, this citation shall become a final order of the Board 30 days after the Date of Issuance. Payment of the Administrative Fine is due within 30 days of the date the citation becomes final.

The failure of a professional engineer or professional land surveyor to comply with the order of abatement or pay the administrative fine after a citation becomes final is grounds for suspension or revocation of his or her license. If a citation is not appealed and the cited person fails to pay the entire fine, the balance due for the fine shall be added to the renewal fee for the license, and the license shall not be renewed until the fine(s) is/are paid in full.

To appeal this citation or any portion thereof, or to request an informal conference, complete the enclosed "notice of appeal/request for an informal conference" form and submit it to the Board within 30 days of the date of issuance of this citation. Failure to submit a written request for an administrative hearing and/or an informal conference within 30 days of the date of issuance of this citation will waive your right to appeal this citation.

Original Signed

Cindi Christenson, Executive Officer

DECLARATION OF SERVICE BY CERTIFIED and REGULAR MAIL

I, Jacqueline Jenkins, declare that I am a citizen of the United States of America, over 18 years of age, and not a party to the within cause; my business address is 2535 Capitol Oaks Drive, Suite 300, Sacramento, CA 95833. I served the attached copy of CITATION NUMBER 5245 - L ISSUED TO JOHN WURTZ by certified and regular mail to the following, by placing same in envelopes addressed as follows:

NAME/ADDRESS

CERTIFIED MAIL NUMBER

JOHN WURTZ
1066 W 13TH STREET
UPLAND, CA 91786

7005 3110 0001 1003 4385

Said envelopes were then, on February 28, 2008, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, as certified, return receipt requested, and regular mail, with the postage thereon fully prepaid.

Executed on February 28, 2008, at Sacramento, California.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Original Signed

Jacqueline Jenkins
Declarant



BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

2535 Capitol Oaks Drive, Suite 300, Sacramento, CA 95833-2944

Telephone: (916) 263-2222 Toll Free: 1-866-780-8370

Facsimile: (916) 263-2246

www.dca.ca.gov/pels



NOTICE OF APPEAL
REQUEST FOR INFORMAL CONFERENCE
AND/OR ADMINISTRATIVE HEARING

JOHN WURTZ
ISSUED ON FEBRUARY 28, 2008

JOHN WURTZ
1066 W 13th Street
Upland, CA 91786

2002-08-177
C 24263/Active

I hereby acknowledge receipt of the above referenced citation and notification of my rights to appeal the citation. I hereby request: (check appropriate items)

_____ AN INFORMAL CONFERENCE with the Executive Officer and, if I choose, my legal counsel or authorized representative. I understand the Executive Officer may also have legal counsel or an authorized representative present at the conference.

_____ AN ADMINISTRATIVE HEARING conducted in accordance with the provisions of the California Administrative Procedures Act, Division 5 of Part 1 of Chapter 3 of Title 2 of the Government Code.

You May Request Both an Informal Conference and an Administrative Hearing by Checking Both Items. You May Withdraw a Request for an Informal Conference Anytime Prior to the Date of the Conference. You May Withdraw a Request for an Administrative Hearing Anytime Prior to the Hearing Date.

By Not Requesting An Administrative Hearing Or An Informal Conference Within 30 Days Of The Date Of Issuance Of The Citation, You Expressly Waive The Right To Appeal The Citation. If You Request An Informal Conference And The Citation Is Affirmed Or Modified, You May Request An Administrative Hearing Within 30 Days Of The Date Of The Issuance Of The Order Affirming Or Modifying The Citation.

By returning this signed form to the Board office, you are stating your intent to appeal this citation. (You must submit a statement of your reasons with this notice to the Board) If you have any questions concerning this process, please contact Jacqueline Jenkins, Citation Coordinator, at (916) 263-2253 or Jackie_Jenkins@dca.ca.gov.

Signature _____

Date _____

Telephone #: Business () _____

Home () _____

**BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

2535 Capitol Oaks Drive, Suite 300, Sacramento, CA 95833-2944

Telephone: (916) 263-2222 Toll Free: 1-866-780-8370

Facsimile: (916) 263-2246

www.dca.ca.gov/pels**STATEMENT OF RIGHTS - INSTRUCTIONS TO CITED PERSON**

You Are Hereby Served With A Citation Issued By The Executive Officer Of The California State Board For Professional Engineers And Land Surveyors.

The citation is being served in accordance with Section 125.9 of the Business and Professions Code, and Title 16, California Code of Regulations sections 473.

Unless appealed, the citation shall be deemed a final order 30 days after the date of issuance of the citation. All orders of abatement or assessments of administrative fines are to be complied with in accordance with the time specified in the citation.

You may appeal the citation by submitting a written request for appeal to the Executive Officer within 30 days of the date of issuance of the citation. You may also submit a written request within 30 days of the date of issuance of the citation for an informal conference with the Executive Officer with respect to the violations alleged, scope of order of abatement, or amount of administrative fine assessed.

INFORMAL CONFERENCE

The Executive Officer may, within 30 days from receipt of a written request, hold an informal conference with the cited person and/or the cited person's legal counsel or authorized representative.

At the conclusion of the informal conference, the Executive Officer may affirm, modify, or dismiss the citation and shall state in writing the reasons for his or her action and serve a copy of the findings and decision to the cited person within 30 days from the date of the informal conference. The decision shall be deemed to be a final order of the Executive Officer.

ADMINISTRATIVE HEARING

In order to be entitled to a hearing before an administrative law judge, a written request for an administrative hearing must be submitted to the Executive Officer within 30 days of the date of issuance of the citation, affirmation or modification of the citation. Administrative hearings will be conducted in accordance with the provisions of the Administrative Procedures Act, Chapters 4.5 and 5, (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code. The Board may review and sustain or reverse, by a majority vote, any final order.

Exhibit B

Citation Order 5246-L Issued to Respondent John Wurtz on February 28, 2008



BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

2535 Capitol Oaks Drive, Suite 300, Sacramento, California, 95833-2944

Telephone: (916) 263-2222 – Toll Free: 1-866-780-5370

Facsimile: (916) 263-2246

www.pels.ca.gov & www.geology.ca.gov



DECLARATION OF CUSTODIAN OF RECORDS

I, NANCY A. EISSLER, state:

I am the Enforcement Program Manager of the Board for Professional Engineers, Land Surveyors, and Geologists, and in that capacity am the duly authorized custodian of the records of that Board, and make this certification pursuant to that authority.

I certify that the attached document is a true and correct copy of Citation Order 5246-L issued to John Wurtz. This record is maintained by the Board for Professional Engineers, Land Surveyors, and Geologists in the normal course of its official business and was submitted to the Board at the time and in the manner prescribed by law.

I declare under penalty of perjury that the foregoing is true and correct. Executed this twenty-third day of March, 2011, at Sacramento, California.

Original Signed

NANCY A. EISSLER
Enforcement Program Manager





BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
2535 Capitol Oaks Drive, Suite 300, Sacramento, CA 95833-2944
Telephone: (916) 263-2222 Toll Free: 1-866-780-8370
Facsimile: (916) 263-2246
www.dca.ca.gov/pels



CITATION ORDER

5246 - L

ISSUED TO

JOHN WURTZ
1066 W 13th Street
Upland, CA 91786

ON FEBRUARY 29, 2008

BOARD CASE 2003-07-194

CINDI CHRISTENSON, in her official capacity as the Executive Officer for the Board for Professional Engineers and Land Surveyors (hereinafter referred to as the "Board"), issues this citation in accordance with Title 16, Division 5, California Code of Regulation section 473 for the violation(s) described below.

ORDER OF ABATEMENT

The Board hereby orders you to immediately cease and desist from violating Business and Professions Code section(s) 8759, 8762(c) and 8767 and also orders you to resubmit to the San Bernardino Surveyors Office a corrected Record of Survey for property identified as San Bernardino County, Record of Survey, number 05-403, located between F and G Streets, facing Monte Vista, City of Chino, San Bernardino County, California. and submit proof to the Board of resubmitted survey to the County of San Bernardino County Surveyor's Office within 30 days of the date the citation becomes final.

ORDER TO PAY ADMINISTRATIVE FINE

The Board hereby orders you to pay an administrative fine in the amount of \$1000.00 as provided for by Title 16, Division 5, Section 473.1(c) of the California Code of Regulations for the violation of Section 8759, 8762(c), and 8767 of the Business and Professions Code, within 30 days of the date the citation becomes final.

Licensing History

The records of the Board show that on June 12, 1974, the Board issued a Civil Engineer license, number C-24263 to John Wurtz; license number C-24263 expires on December 31, 2009, unless renewed.

Cause for Citation

An investigation, including a review by at least one licensee of the Board who is competent in the branch of professional engineering or professional land surveying most relevant to the subject matter, determined that you have violated Business and Professions Code sections 8759, 8762(c), and 8767 in that you performed land surveying work on a property identified as San Bernardino County, Record of Survey number 05-403, (property located between F and G Streets, facing Monte Vista, City of Chino, County of San Bernardino, California) and failed to timely file the Record of Survey, and after the Record of Survey was returned to you by the San Bernardino County Surveyor's Office for correction, you failed to timely resubmit the Record of Survey to the San Bernardino County Surveyor's Office. Also, you failed to use a written contract as required for this project.

8759. Written Contracts

(a) A licensed land surveyor or registered civil engineer authorized to practice land surveying shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. The written contract shall be executed by the licensed land surveyor or registered civil engineer and the client, or his or her representative, prior to the licensed land surveyor or registered civil engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

(1) A description of the services to be provided to the client by the licensed land surveyor or registered civil engineer.

(2) A description of any basis of compensation applicable to the contract, and the method of payment agreed upon by the parties.

(3) The name, address, and license or certificate number of the licensed land surveyor or registered civil engineer, and the name and address of the client.

(4) A description of the procedure that the licensed land surveyor or registered civil engineer and the client will use to accommodate additional services.

(5) A description of the procedure to be used by any party to terminate the contract.

(b) This section shall not apply to any of the following:

(1) Professional land surveying services rendered by a licensed land surveyor or registered civil engineer for which the client will not pay compensation.

(2) A licensed land surveyor or registered civil engineer who has a current or prior contractual relationship with the client to provide professional services pursuant to this chapter, and that client has paid the surveyor or engineer all of the fees that are due under the contract.

(3) If the client knowingly states in writing after full disclosure of this section that a contract which complies with the requirements of this section is not required.

(4) Professional services rendered by a licensed land surveyor or a registered civil engineer to any of the following:

(A) A professional engineer licensed or registered under Chapter 7 (commencing with Section 6700).

(B) A land surveyor licensed under this chapter.

(C) An architect licensed under Chapter 3 (commencing with Section 5500).

(D) A contractor licensed under Chapter 9 (commencing with Section 7000).

(E) A geologist or a geophysicist licensed under Chapter 12.5 (commencing with Section 7800).

(F) A manufacturing, mining, public utility, research and development, or other industrial corporation, if the services are provided in connection with or incidental to the products, systems, or services of that corporation or its affiliates.

(G) A public agency.

(c) "Written contract" as used in this section includes a contract that is in electronic form.

8762. Records of survey

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

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

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

(2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

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

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

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

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

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

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

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

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

8767. Approval of record; changes; resubmittal

If the county surveyor finds that the record of survey complies with the examination in Section 8766, the county surveyor shall endorse a statement on it of his or her examination, and shall present it to the county recorder for filing. Otherwise the county surveyor shall return it to the person who presented it, together with a written statement of the changes necessary to make it conform to the requirements of Section 8766. The licensed land surveyor or registered civil engineer submitting the record of survey may then make the agreed changes and note those matters which cannot be agreed upon in accordance with the provisions of Section 8768 and shall resubmit the record of survey within 60 days, or within the time as may be mutually agreed upon by the licensed surveyor or registered engineer and the county surveyor, to the county surveyor for filing pursuant to Section 8768.

Payment Information

Payment of any fine shall not constitute an admission of the violation charged. (Business and Professions Code section 125.9(b)(4)) Where a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure. (B & P 125.9(d).) Payment of the administrative fine should be made to the Board for Professional Engineers and Land Surveyors, 2535 Capitol Oaks Drive, Suite 300, Sacramento, CA, 95833-2926.

Appeal and Compliance Information

Unless appealed, this citation shall become a final order of the Board 30 days after the Date of Issuance. Payment of the Administrative Fine is due within 30 days of the date the citation becomes final.

The failure of a professional engineer or professional land surveyor to comply with the order of abatement or pay the administrative fine after a citation becomes final is grounds for suspension or revocation of his or her license. If a citation is not appealed and the cited person fails to pay the entire fine, the balance due for the fine shall be added to the renewal fee for the license, and the license shall not be renewed until the fine(s) is/are paid in full.

To appeal this citation or any portion thereof, or to request an informal conference, complete the enclosed "notice of appeal/request for an informal conference" form and submit it to the Board within 30 days of the date of issuance of this citation. Failure to submit a written request for an administrative hearing and/or an informal conference within 30 days of the date of issuance of this citation will waive your right to appeal this citation.

Original Signed

Cindi Christenson, Executive Officer

DECLARATION OF SERVICE BY CERTIFIED and REGULAR MAIL

I, Jacqueline Jenkins, declare that I am a citizen of the United States of America, over 18 years of age, and not a party to the within cause; my business address is 2535 Capitol Oaks Drive, Suite 300, Sacramento, CA 95833. I served the attached copy of CITATION NUMBER 5246 - L ISSUED TO JOHN WURTZ by certified and regular mail to the following, by placing same in envelopes addressed as follows:

NAME/ADDRESS

CERTIFIED MAIL NUMBER

JOHN WURTZ
1066 W 13TH STREET
UPLAND, CA 91786

7005 3110 0001 1003 4392

Said envelopes were then, on February 29, 2008, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, as certified, return receipt requested, and regular mail, with the postage thereon fully prepaid.

Executed on February 29, 2008, at Sacramento, California.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Original Signed

Jacqueline Jenkins
Declarant



BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
2535 Capitol Oaks Drive, Suite 300, Sacramento, CA 95833-2944
Telephone: (916) 263-2222 Toll Free: 1-866-780-8370
Facsimile: (916) 263-2246
www.dca.ca.gov/pels



**NOTICE OF APPEAL
REQUEST FOR INFORMAL CONFERENCE
AND/OR ADMINISTRATIVE HEARING**

5246 - L
ISSUED ON FEBRUARY 29, 2008

JOHN WURTZ
1066 W 13TH STREET
UPLAND, CA 91786

2003-07-194
C 24263/ACTIVE

I hereby acknowledge receipt of the above referenced citation and notification of my rights to appeal the citation. I hereby request: (check appropriate items)

 AN INFORMAL CONFERENCE with the Executive Officer and, if I choose, my legal counsel or authorized representative. I understand the Executive Officer may also have legal counsel or an authorized representative present at the conference.

 AN ADMINISTRATIVE HEARING conducted in accordance with the provisions of the California Administrative Procedures Act, Division 5 of Part 1 of Chapter 3 of Title 2 of the Government Code.

You May Request Both an Informal Conference and an Administrative Hearing by Checking Both Items. You May Withdraw a Request for an Informal Conference Anytime Prior to the Date of the Conference. You May Withdraw a Request for an Administrative Hearing Anytime Prior to the Hearing Date.

By Not Requesting An Administrative Hearing Or An Informal Conference Within 30 Days Of The Date Of Issuance Of The Citation, You Expressly Waive The Right To Appeal The Citation. If You Request An Informal Conference And The Citation Is Affirmed Or Modified, You May Request An Administrative Hearing Within 30 Days Of The Date Of The Issuance Of The Order Affirming Or Modifying The Citation.

By returning this signed form to the Board office, you are stating your intent to appeal this citation. (You must submit a statement of your reasons with this notice to the Board) If you have any questions concerning this process, please contact Jacqueline Jenkins, Citation Coordinator, at (916) 263-2253 or Jackie_Jenkins@dca.ca.gov.

Signature _____

Date _____

Telephone #: Business () _____

Home () _____

**BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

2535 Capitol Oaks Drive, Suite 300, Sacramento, CA 95833-2944

Telephone: (916) 263-2222 Toll Free: 1-866-780-8370

Facsimile: (916) 263-2246

www.dca.ca.gov/pels**STATEMENT OF RIGHTS - INSTRUCTIONS TO CITED PERSON**

You Are Hereby Served With A Citation Issued By The Executive Officer Of The California State Board For Professional Engineers And Land Surveyors.

The citation is being served in accordance with Section 125.9 of the Business and Professions Code, and Title 16, California Code of Regulations sections 473.

Unless appealed, the citation shall be deemed a final order 30 days after the date of issuance of the citation. All orders of abatement or assessments of administrative fines are to be complied with in accordance with the time specified in the citation.

You may appeal the citation by submitting a written request for appeal to the Executive Officer within 30 days of the date of issuance of the citation. You may also submit a written request within 30 days of the date of issuance of the citation for an informal conference with the Executive Officer with respect to the violations alleged, scope of order of abatement, or amount of administrative fine assessed.

INFORMAL CONFERENCE

The Executive Officer may, within 30 days from receipt of a written request, hold an informal conference with the cited person and/or the cited person's legal counsel or authorized representative.

At the conclusion of the informal conference, the Executive Officer may affirm, modify, or dismiss the citation and shall state in writing the reasons for his or her action and serve a copy of the findings and decision to the cited person within 30 days from the date of the informal conference. The decision shall be deemed to be a final order of the Executive Officer.

ADMINISTRATIVE HEARING

In order to be entitled to a hearing before an administrative law judge, a written request for an administrative hearing must be submitted to the Executive Officer within 30 days of the date of issuance of the citation, affirmation or modification of the citation. Administrative hearings will be conducted in accordance with the provisions of the Administrative Procedures Act, Chapters 4.5 and 5, (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code. The Board may review and sustain or reverse, by a majority vote, any final order.