

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

In the Matter of the First Amended)	
Accusation against:)	
)	
JAMES W. McPHEE)	Case No. 1041-A
5640 Fruitridge Road)	
Sacramento, CA 95820)	
)	
Land Surveyor License, No. L 6692,)	
)	
Respondent.)	
_____)	

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists as its Decision in the above-entitled matter.

This Decision shall become effective on October 16, 2015.

IT IS SO ORDERED September 10, 2015.

Original Signed

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

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GEOFFREY S. ALLEN
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9 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
GEOLOGISTS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 1041-A

13 **JAMES W. MCPHEE**
14 **5640 Fruitridge Rd.**
Sacramento, CA 95820

OAH No. 2014090230

STIPULATED SURRENDER OF
LICENSE AND ORDER

15 **Land Surveyor License No. L 6692**

16 Respondent.
17

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

20 PARTIES

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

25 2. James W. McPhee (Respondent) is representing himself in this proceeding and has
26 chosen not to exercise his right to be represented by counsel.

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1 3. On or about February 14, 1992, the Board issued Land Surveyor License No. L 6692
2 (License) to Respondent. The License was in full force and effect at all times relevant to the
3 charges brought in Accusation No. 1041-A and First Amended Accusation 1041-A, and will
4 expire on June 30, 2016, unless renewed.

5 JURISDICTION

6 4. First Amended Accusation No. 1041-A (Accusation) was filed before the Board,
7 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
8 and all other statutorily required documents were properly served on Respondent on July 20,
9 2015. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of the
10 Accusation is attached as Exhibit A and incorporated by reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, and understands the charges and allegations in the
13 Accusation. Respondent also has carefully read, and understands the effects of this Stipulated
14 Surrender of License and Order.

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

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

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in the
26 Accusation, agrees that cause exists for discipline and hereby surrenders his Land Surveyor
27 License No. L 6692 for the Board's formal acceptance.
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1 1. The surrender of Respondent's License and the acceptance of the surrendered License
2 by the Board shall constitute the imposition of discipline against Respondent. This stipulation
3 constitutes a record of the discipline and shall become a part of Respondent's license history with
4 the Board.

5 2. Respondent shall lose all rights and privileges as a Land Surveyor in California as of
6 the effective date of the Board's Decision and Order.

7 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
8 issued, his wall certificate on or before the effective date of the Decision and Order.

9 4. If he ever applies for licensure or petitions for reinstatement in the State of California,
10 the Board shall treat it as a new application for licensure. Respondent must comply with all the
11 laws, regulations and procedures for licensure in effect at the time the application or petition is
12 filed, and all of the charges and allegations contained in the Accusation shall be deemed to be
13 true, correct and admitted by Respondent when the Board determines whether to grant or deny the
14 application or petition.

15 5. Respondent shall pay the agency its costs of investigation and enforcement in the
16 amount of \$17,595.00 prior to issuance of a new or reinstated license.

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ACCEPTANCE

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

DATED: 07/21/2015 *Original Signed*
/ JAMES W. MCPHEE
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board for Professional Engineers, Land Surveyors, and Geologists of the Department of Consumer Affairs.

Dated: 7/21/15

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

Original Signed
GEOFFREY S. ALLEN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1041-A

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

12 In the Matter of the Accusation Against:

Case No. 1041-A

13 **JAMES W. MCPHEE**
5640 Fruitridge Rd.
14 **Sacramento, CA 95820**

FIRST AMENDED
A C C U S A T I O N

15 **Land Surveyor License No. L 6692**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Richard B. Moore, PLS (Complainant) brings this First Amended Accusation solely
21 in his official capacity as the Executive Officer of the Board for Professional Engineers, Land
22 Surveyors, and Geologists, Department of Consumer Affairs. This First Amended Accusation
23 supersedes the Accusation filed by Complainant on April 18, 2014.

24 2. On or about February 14, 1992, the Board for Professional Engineers, Land
25 Surveyors, and Geologists issued Land Surveyor License Number L 6692 to James W. McPhee
26 (Respondent). The Land Surveyor License was in full force and effect at all times relevant to the
27 charges brought herein and will expire on June 30, 2016, unless renewed.
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JURISDICTION

1
2 3. This Accusation is brought before the Board for Professional Engineers, Land
3 Surveyors, and Geologists (Board), Department of Consumer Affairs, under the authority of the
4 following laws. All section references are to the Business and Professions Code unless otherwise
5 indicated.

6 4. Section 8780 of the Code, in pertinent part, states:

7 The board may, upon its own initiative or upon the receipt of a complaint,
8 investigate the actions of any land surveyor licensed under this chapter or any civil
9 engineer licensed under the provisions of Chapter 7 (commencing with Section
6700) who is legally authorized to practice land surveying and make findings
thereon.

10 By a majority vote, the board may publicly reprove, suspend for a period not
11 to exceed two years, or revoke the license or certificate of any land surveyor
12 licensed under this chapter or civil engineer licensed under the provisions of
Chapter 7 (commencing with Section 6700) who is legally authorized to practice
land surveying on any of the following grounds:

13

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

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

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19 5. Section 8762 of the Code, in pertinent part, states:

20 (a) Except as provided in subdivision (b), after making a field survey in
21 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.

22 (b) Notwithstanding subdivision (a), after making a field survey in conformity
23 with the practice of land surveying, the licensed land surveyor or licensed civil
24 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:

25 (1) Material evidence or physical change, which in whole or in part does
26 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
27 county surveying department, or map or survey record maintained by the
Bureau of Land Management of the United States.

28 (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

1 map or survey record maintained by the Bureau of Land Management of the
2 United States. For purposes of this subdivision, a “material discrepancy” is
3 limited to a material discrepancy in the position of points or lines, or in
4 dimensions.

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

10 (4) The location, relocation, establishment, reestablishment, or
11 retracement of one or more points or lines not shown on any subdivision map,
12 official map, or record of survey, the positions of which are not ascertainable
13 from an inspection of the subdivision map, official map, or record of survey.

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

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

22 (d) (1) If the 90-day time limit contained in subdivision (c) cannot be
23 complied with for reasons beyond the control of the licensed land surveyor or
24 licensed civil engineer, the 90-day time period shall be extended until the time
25 at which the reasons for delay are eliminated. If the licensed land surveyor or
26 licensed civil engineer cannot comply with the 90-day time limit, he or she
27 shall, prior to the expiration of the 90-day time limit, provide the county
28 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.

...

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

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1 **WILMINGTON PROJECT**

2 7. Respondent prepared, approved and submitted a survey indicating compliance with
3 standards developed by American Land Title Association and the American Congress on
4 Surveying and Mapping (“ ALTA/ACSM survey”) for a property located at 505 Pier B Street,
5 Wilmington, CA, on February 6, 2009, with a date of last revision on May 28, 2009. The subject
6 property was described as: Parcels 1, 2, and 3 as described by Chicago Title Company Order No.
7 910075085-X59, dated April 28, 2009.

8 **FIRST CAUSE FOR DISCIPLINE**

9 (Negligence)

10 8. Respondent is subject to disciplinary action under Code section 8780, subd. (b), in
11 that Respondent was negligent with the Wilmington Project. Respondent was negligent in his
12 preparation of the ALTA/ACSM survey for the Wilmington Project. Respondent’s negligence
13 included, but is not limit to, the following:

14 a. Respondent failed to obtain the necessary record maps and recorded documents to
15 identify controlling monuments and/or calls in the deed.

16 b. Respondent failed to properly establish the properties as described in the title report,
17 including Henry Ford Avenue, the City of Long Beach/City of Los Angeles boundary line, and
18 other calls specific to the legal description contained therein.

19 c. Respondent failed to comply with the 2005 Minimum Detail Requirements for a
20 ALTA/ACSM survey.

21 d. Respondent prepared a legally deficient Record of Survey.

22 **SECOND CAUSE FOR DISCIPLINE**

23 (Violation of Land Surveying Law)

24 9. Respondent is subject to disciplinary action under Code section 8780, subd. (d), in
25 that Respondent violated laws related to the practice of land surveying with the Wilmington
26 Project. The circumstances are:

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1 a. Respondent violated Code section 8762, subd. (b)(3) by failing to file a Record of
2 Survey after a field survey results in a material alternate position of points or lines shown on any
3 previously recorded map.

4 b. Respondent violated Code section 8762, subd. (b)(4) by failing to file a Record of
5 Survey after a field survey results in the establishment of a point or line not shown on any
6 previously recorded map.

7 c. Respondent violated Code section 8762, subd. (c) by failing to file a Record of
8 Survey within ninety days of completing a land survey.

9 d. Respondent violated Code section 8762, subd. (d)(1) by failing to notify the County if
10 unable to file a Record of Survey within 90 days of completing a land survey that results in the
11 need to file a Record of Survey.

12 **SAN JOSE PROJECT**

13 10. Respondent prepared, approved and submitted a ALTA/ACSM survey for a property
14 located at 5853/5863 Rue Ferrari Drive, San Jose, CA, on June 7, 2010, with an updated one
15 dated June 10, 2011, both indicated as “date of last revision” on the face of the map. The subject
16 property was described as: Parcel 1, as shown on the Parcel Map filed for record in the Office of
17 the Recorder of the County of Santa Clara, State of California, on September 26, 630 of Maps,
18 Pages 39 and 40.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Negligence)

21 11. Respondent is subject to disciplinary action under Code section 8780, subd. (b), in
22 that Respondent was negligent with the San Jose Project. Respondent’s negligence included, but
23 is not limit to, the following:

24 a. Respondent failed to use the proper procedure to show the relationship and existence
25 of a masonry wall (near the subject property line) at the northwesterly side of the subject
26 property.

27 b. Respondent failed to comply with the 2005 Minimum Detail Requirements for a
28 ALTA/ACSM survey.

1 c. Respondent prepared a legally deficient Record of Survey.

2 FOURTH CAUSE FOR DISCIPLINE

3 (Violation of Land Surveying Law)

4 12. Respondent is subject to disciplinary action under Code section 8780, subd. (d), in
5 that Respondent violated laws related to the practice of land surveying with the San Jose Project.
6 The circumstances are as follows:

7 a. Respondent violated Code section 8762, subd. (b)(2) by failing to file a Record of
8 Survey after a survey results in a material discrepancy with information shown on a previously
9 recorded map.

10 b. Respondent violated Code section 8762, subd. (c) by failing to file a Record of
11 Survey within ninety days of performing a land survey.

12 **OAKLAND PROJECT**

13 13. Respondent prepared, approved and submitted a ALTA/ACSM survey for a property
14 located at 8350 Pardee Drive, Oakland, CA, on September 30, 2009, with a date of last revision
15 on June 2, 2010. The subject property was described as: Lots A and B as shown on Exhibit of
16 Parcel Map Waiver No. 01-2008 as notice in the Certificate of Compliance, Recorded as
17 Document No. 2008-213010, Official Records of Alameda County.

18 FIFTH CAUSE FOR DISCIPLINE

19 (Negligence)

20 14. Respondent is subject to disciplinary action under Code section 8780, subd. (b), in
21 that Respondent was negligent with the Oakland Project. Respondent's negligence included, but
22 is not limit to, the following:

23 a. Respondent prepared a legally deficient Record of Survey.

24 b. Respondent failed to comply with the 2005 Minimum Detail Requirements for a
25 ALTA/ACSM survey.

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1 SIXTH CAUSE FOR DISCIPLINE

2 (Violation of Land Surveying Law)

3 15. Respondent is subject to disciplinary action under Code section 8780, subd. (d), in
4 that Respondent violated laws related to the practice of land surveying with the Oakland Project.

5 The circumstances are as follows:

6 a. Respondent violated Code section 8762, subd. (b)(1) by failing to file a Record of
7 Survey after a field survey results show material evidence or physical change which is not shown
8 on a previously recorded map.

9 b. Respondent violated Code section 8762, subd. (b)(2) by failing to file a Record of
10 Survey after a field survey results in a material discrepancy with information shown on a
11 previously recorded map.

12 c. Respondent violated Code section 8762, subd. (b)(4) by failing to file a Record of
13 Survey after a field survey results in the establishment of a point or line not shown on any
14 previously recorded map.

15 d. Respondent violated Code section 8762, subd. (c) by failing to file a Record of
16 Survey within ninety days of completing a land survey.

17 **GARDEN GROVE PROJECT**

18 16. Respondent prepared, approved and submitted a ALTA/ACSM survey for a property
19 located at 12831 West Street, Garden Grove, CA, on July 30, 2008, with a date of last revision on
20 January 16, 2009. The subject property was described as: All that certain property situated in the
21 County of Orange, State of California, described as follows: The East Half o f the Southeast
22 Quarter of Section 33, Township 4 South, Range 10 West, in the Rancho Los Bolsas, in the City
23 of Garden Grove, County of Orange, State of California, as said section is shown on a Map
24 recorded in Book 51, Page 10 of Miscellaneous Maps, in the Office of the Recorder of said
25 County.

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1 SEVENTH CAUSE FOR DISCIPLINE

2 (Negligence)

3 17. Respondent is subject to disciplinary action under Code section 8780, subd. (b), in
4 that Respondent was negligent with the Garden Grove Project. Respondent's negligence
5 included, but is not limit to, the following:

6 a. Respondent prepared a legally deficient Record of Survey.

7 b. Respondent failed to comply with the 2005 Minimum Detail Requirements for a
8 ALTA/ACSM survey.

9 EIGHTH CAUSE FOR DISCIPLINE

10 (Violation of Land Surveying Law)

11 18. Respondent is subject to disciplinary action under Code section 8780, subd. (d), in
12 that Respondent violated laws related to the practice of land surveying with the Oakland Project.
13 The circumstances are as follows:

14 a. Respondent violated Code section 8762, subd. (b)(4) by failing to file a Record of
15 Survey after a field survey results in the establishment of a point or line not shown on any
16 previously recorded map.

17 b. Respondent violated Code section 8762, subd. (c) by failing to file a Record of
18 Survey within ninety days of performing a land survey.

19 c. Respondent violated Code section 8762, subd. (d)(1) by failing to notify the County if
20 unable to file a Record of Survey within 90 days of completing a land survey that results in the
21 need to file a Record of Survey.

22 d. Respondent violated Code section 8771 by failing to set sufficient monuments during
23 a field survey.

24 e. Respondent violated Code section 8772 by failing to properly tag monuments set
25 during a field survey.

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1 **SAN RAFAEL PROJECT**

2 19. Respondent prepared, approved and submitted a ALTA/ACSM survey for a property
3 located at 40 Professional Center Parkway in San Rafael, California, on November 27, 2012, with
4 a date of last revision on January 14, 2013. The subject property was described as: Parcels 1, 2,
5 and 3 as described by the Title Commitment provided by Fidelity National Title Company,
6 Commitment No. 12-543435-KR, dated October 18, 2012.

7 NINTH CAUSE FOR DISCIPLINE

8 (Violation of Land Surveying Law)

9 20. Respondent is subject to disciplinary action under Code section 8780, subd. (d), in
10 that Respondent violated laws related to the practice of land surveying with the San Rafael
11 Project. The circumstances are as follows:

12 a. Respondent violated Code section 8762, subd. (b)(5) by failing to file a Record of
13 Survey after a field survey results in points or lines set that are not shown on any previously
14 recorded map.

15 PRAYER

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

19 1. Revoking or suspending Land Surveyor License Number L 6692 issued to James W.
20 McPhee;

21 2. Ordering James W. McPhee to pay the Board for Professional Engineers, Land
22 Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case,
23 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: 7/17/15

Original Signed

RICHARD B. MOORE, PLS
Executive Officer
Board for Professional Engineers, Land Surveyors, and
Geologists
Department of Consumer Affairs
State of California
Complainant

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First Amended Accusation.docx