

**BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

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April 19, 2006

Mr. Douglas R. Melchior, PLS 4611
Melchior Land Surveying, Inc.
5731 Palmer Way, Suite G
Carlsbad, CA 92010

SUBJECT: Questions Regarding Professional Land Surveying Practice

Dear Mr. Melchior,

This letter is in response to the questions asked in your letter dated April 27, 2006 regarding the construction Staking Activities and Surveying Tasks being performed by Grading Contractors using the Global Positioning System (G.P.S.) in conjunction with Electronic Engineering and Surveying Data for their projects. We apologize for the length of time taken to respond. We have been hampered in our efforts to supply timely information to the public by budgeting and staffing issues that are beyond our control.

We realize that confusion sometimes exists in the interpretation of some of the states laws, rules and regulations; therefore the Board is providing answers to your questions and supporting information stated herein.

Your letter states that Grading Contractors are performing construction staking and topographic surveying and calculations using G.P.S. These contractors are also requesting electronic engineering and surveying data from the engineers and surveyors for the project.

You also stated in your letter that in conversations with Howard Brunner, PLS, Land Surveyor Consultant/Registrar for the Board for Professional Engineers and Land Surveyors these unlicensed activities are in violation of the Land Surveyor's Act and that those licensees' supplying electronic engineering and surveying data to these contractors are aiding and abetting such unlicensed practice.

We have been aware of this practice and have been actively enforcing such practices when brought to the attention of the Board and have been obtaining compliance with the states laws, rules and regulations regarding such practice.

We have also been active in our Outreach Program by attending meetings of the California Land Surveyors Association State and Chapter Meetings and making those in attendance aware of the laws, rules and regulations that govern the practice of land surveying and engineering in California. Among the issues addressed in those meetings is the unlicensed practice of land surveying and engineering performed by contractors and grade setters using G.P.S.

Our response to your questions is as follows:

B&P Code Section 8726 states as follows:

A person, including any person employed by the state or by a city, county, or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following:

(a) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(b) Determines the configuration or contour of the earth's surface, or the position of fixed objects thereon or related thereto, by means of measuring lines and angles, and applying the principles of mathematics or photogrammetry.

(c) Locates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries.

(d) Makes any survey for the subdivision or resubdivision of any tract of land. For the purposes of this subdivision, the term "subdivision" or "resubdivision" shall be defined to include, but not limited to, the definition in the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) or the Subdivided Lands Law (Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of this Code).

(e) By the use of the principles of land surveying determines the position for any monument or reference point which marks a property line, boundary, or corner, or sets, resets, or replaces any such monument or reference point.

(f) Geodetic or cadastral surveying. As used in this chapter, geodetic surveying means performing surveys, in which account is taken of the figure and size of the earth to determine or predetermine the horizontal or vertical positions of points, monuments, or stations for use in the practice of land surveying or for stating the position of geodetic control points, monuments, or stations by California Coordinate System coordinates.

(g) Determines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in subdivisions (a), (b), (c), (d), (e), and (f).

(h) Indicates, in any capacity or in any manner, by the use of the title "land surveyor" or by any other title or by any other representation that he or she practices or offers to practice land surveying in any of its branches.

(i) Procures or offers to procure land surveying work for himself, herself, or others.

(j) Manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed or practiced.

(k) Coordinates the work of professional, technical, or special consultants in connection with the activities authorized by this chapter.

(l) Determines the information shown or to be shown within the description of any deed, trust deed, or other title document prepared for the purpose of describing the limit of real property in connection with any one or more of the functions described in subdivisions (a) to (f), inclusive.

(m) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a), (b), (c), (d), (e), (f), (k) and (l).

Any department or agency of the state or any city, county, or city and county which has an unregistered person in responsible charge of land surveying work on January 1, 1986, shall be exempt from the requirement that the person be licensed as a land surveyor until such time as the person currently in responsible charge is replaced.

The review, approval, or examination by a governmental entity of documents prepared or performed pursuant to this section shall be done by, or under the direct supervision of, a person authorized to practice land surveying.

B&P Code Section 6731.1 states as follows:

Civil engineering also includes the practice or offer to practice, either in a public or private capacity, all of the following:

(a) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(b) Determines the configuration or contour of the earth's surface or the position of fixed objects thereon or related thereto, by means of measuring lines and angles, and applying the principles of trigonometry or photogrammetry.

(c) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a) and (b).

The portions of the B&P Codes stated above that address these issues is stated in Section 8726 (a), (b), (i), (j) and (m) and Section 6731.1 (a), (b) and (c).

Construction Staking as described in B&P Code Section 8726 (a) and 6731.1 (a) is, and has been a portion of the practice of land surveying since at least 1953 and has also been a portion of the practice of civil engineering since 1982.

Topographic Surveying as described in B&P Code Section 8726 (b) and 6731.1 (b) is, and has been a portion of the practice of land surveying since at least 1953 and has also been a portion of the practice of civil engineering since 1982.

The use of total stations, G.P.S. units and data collectors to perform construction staking for any of the fixed works embraced within the practice of civil engineering, the gathering and collecting of horizontal and vertical control data from any of these instruments, and the analyzing and calculations of that data for the purpose of determining the configuration or contour of the earth's surface or the position of fixed objects thereon or related thereto, by means of measuring lines and angles, and applying the principles of trigonometry is the practice of Land Surveying and Civil Engineering as defined in the above referenced B&P Code Sections.

Construction Staking and Topographic Surveying activities also includes an individual who creates, prepares, or modifies electronic or computerized data in the performance of the activities described in B&P Code Section 8726 (a) and (b) and 6731.1 (a) and (b).

These activities also include an individual who procures or offers to procure land surveying work for himself, herself, or others and manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed or practiced as described in B&P Code Section 8726 (i) and (j).

B&P Code Section 8780 states as follows:

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 or registered under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:

- (a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.
- (b) Any negligence or incompetence in his or her practice of land surveying.
- (c) Any fraud or deceit in obtaining his or her license.
- (d) Any violation of any provision of this chapter or of any other law relating to or involving the practice of land surveying.
- (e) Any conviction of a crime substantially related to the qualifications, functions and duties of a land surveyor. The record of the conviction shall be conclusive evidence thereof.
- (f) Aiding or abetting any person in the violation of any provision of this chapter.
- (g) A breach or violation of a contract to provide land surveying services.
- (h) A violation in the course of the practice of land surveying of a rule or regulation of unprofessional conduct adopted by the board.

Therefore, Licensed Land Surveyors or Registered Civil Engineers who provide electronic engineering and surveying data to these contractors are aiding and abetting such unlicensed practice.

I trust that this information answers your questions and addresses your concerns. If you need additional information or amplification of any of the items addressed in this letter, please contact the undersigned at your convenience.

Sincerely,



Cindi Christenson, PE
Executive Officer