

# Memorandum

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Board of Registration for Professional Engineers  
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Date: January 16, 1998

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From: Department of Consumer Affairs  
Legal Office

Subject: Monumentation of an Easement and Record of Survey Filing Requirements

This is in response to your request for an opinion regarding the applicability of the Professional Land Surveyors' Act in the above referenced matter. I regret the press of business has prevented a more prompt response. Specifically, you posed the following question:

### Question

Does the monumentation of an easement require the filing of a Record of Survey?

### Conclusion

The monumentation of an easement does not require the filing of a Record of Survey.

### Analysis

The Professional Land Surveyors' Act regulates the practice of land surveying in this state by restricting the practice of land surveying to those persons qualified and licensed to engaged in that profession. (Bus. & Prof. Code § 8725.)

The practice of land surveying is defined at Business and Professions Code section 8726 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.**[Emphasis added.]

(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 be 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 monument or reference point.** [Emphasis added.]

(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),

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(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 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."

The extent to which a person is engaged in any of the activities delineated in Business and Professions Code section 8726 determines whether or not they are required to hold a professional land surveyor license. In the present circumstance, subdivisions (c) and (e) of Section 8726, appear to be applicable. In relevant part, an "easement" is defined to be an interest in land permitting "a right of use over the property of an other" according to Black's Law Dictionary (1979).

The monumenting of an easement involves the practice of land surveying to the extent that a person "[l]ocates, 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." (Bus. & Prof. Code § 8726(c).) Or, in the alternative, the monumenting of an easement constitutes the practice of land surveying to the extent that the setting of permanent markers or monuments for an easement involves the "use of the principles of land surveying" in determining the position for any "monument or reference point which marks a property line, boundary, or corner, or sets, resets, or replaces any monument or reference point. (Bus. & Prof. Code 8726(e).)

Although the monumenting of an easement clearly falls within the restricted practice of land surveying, such monumentation does not trigger the mandatory Record of Survey filing requirements of Business and Professions Code section 8762. Although an easement is an interest in real property, the mandatory Record of Survey filing requirements are only applicable to a "survey relating to land boundaries or property lines." It is noteworthy that the term "easement" is not specifically referenced in Section 8762. This contrasts with the inclusion of that term in the list of activities identified in subdivision (c) of Section 8726 for purposes of defining land surveying. That subsection employs the terms "property line or boundary" as well as "easement" and "right-of-way." Consequently, if the Legislature intended to include the monumentation of an easement in the mandatory filing requirements of 8762, it would have

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employed that term as it did in defining the practice of land surveying. in 8726. Consequently, the monumentation of an easement does not likely fall within the meaning of either "land boundaries or property lines" as those terms are used in Business and Professions Code section 8762.

I trust this is responsive to your request.

DERRY L. KNIGHT  
Deputy Director  
Legal Affairs

  
By GARY W. DUKE  
Staff Counsel