



Institutional Affiliate of American
Congress on Surveying and
Mapping

The California Surveyor

THE VOICE OF THE LAND SURVEYORS OF CALIFORNIA

NO. 48

WINTER EDITION

1977

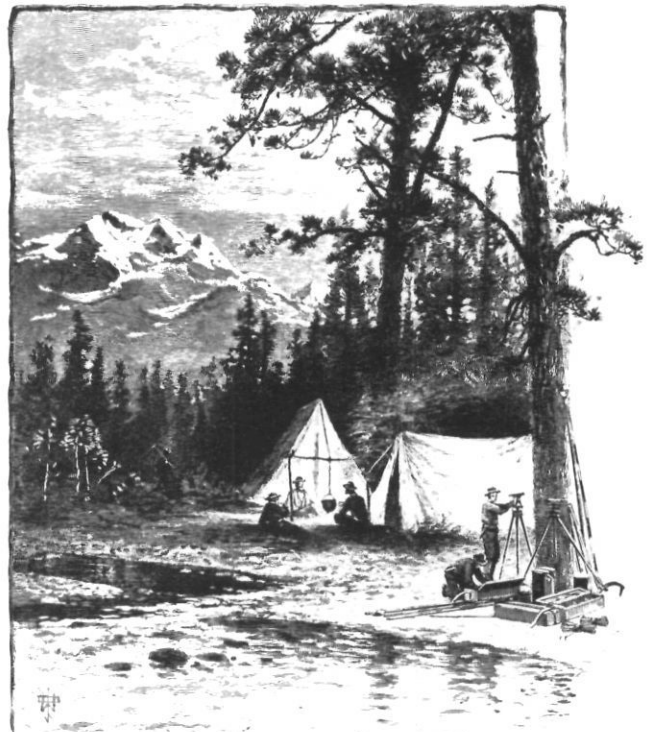
A.C.S.M. Board of Directors Meeting

Donald E. Bender, CLSA Delegate to the Land Surveys
Division of A.C.S.M.

The following items of interest to California
urveyors are taken from my personal notes of the Board
meeting held October 21, 1977, in Little Rock, Arkansas.
Minutes of the meeting will be available in the future.

1. Adopted a Resolution which provides that
"One or more persons or firms be assigned
or hired to immediately implement a pro-
gram to provide a level of representation
equivalent in the specific areas of legislation
and agency liason."
2. Increased 1978 dues by approximately ten
percent.
3. Created a curriculum accreditation and
registration committee.
4. Authorized the employment of Mr. David
Puttington as Assistant Director to Bob
Herndon
5. Authorized a lease/purchase agreement for
in-house computer capability.
6. Authorized the Executive Committee to
begin screening candidates for employment
of an in—house education specialist.
7. Authorized a contract for a management
study of A.C.S.M. to be delivered prior to
the March meeting.

(Continued on Page 10)



A FIELD PARTY OF A CENTURY AGO



Trying to combine two hobbies . . . the ped-
dling of survey equipment with model
railroading isn't as far-fetched as it may
seem. As a matter of fact, the two ac-
tivities are quite compatible when you

consider that some of the income from one can be devoted
to the outgo of the other.

Historically, there has been a close affinity between
railroading and surveying, although (and this is a source of
some regret to me personally), survey work no longer
seems to be as important to railroading as it was when
searches were being made for practical routes through the
great mountain barriers of the West.

(Continued on Page 12)

CALIFORNIA LAND SURVEYORS ASSOCIATION
HEADQUARTERS: P.O. BOX 1363
SANTA ROSA, CA 95402
TELEPHONE: 707-526-2572

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**CALIFORNIA BOARD OF REGISTRATION
 FOR PROFESSIONAL ENGINEERS**

**Written Examination Schedule
 1978**

Examination Dates	*Final Filing Dates
Land Surveyor-in-Training — LSIT	
April 15, 1978	January 30, 1978
November 4, 1978	August 14, 1978
**Land Surveyor — LS	
November 4, 1978	July 10, 1978

*Applications filed after the final filing date specified will be considered for the following examination.

Until further notice, these exams will be given only **once a year.

The California Surveyor

is the quarterly publication of The California Land Surveyors Association and is published as a service to the Land Surveying profession of California. It is mailed to all Licensed Land Surveyors and Land Surveyors in Training in the state of California as well as all members of California Land Surveyors Association. The California Surveyor is an open forum for all surveyors, with an editorial policy predicated on the preamble to the constitution of the California Land Surveyors Association and its stated aims and objectives, which read:

“Recognizing that the true merit of a profession is determined by the value of its services to society, the ‘California Land Surveyors Association’ does hereby dedicate itself to the promotion and protection of the profession of Land Surveying as a social and economic influence vital to the welfare of society, community, and state.”

“The purpose of this organization is to promote the common good and welfare of its members in their activities in the profession of Land Surveying, to promote and maintain the highest possible standards of professional ethics and practices, to promote professional uniformity, to promote public faith and dependence in the Land Surveyors and their work.”

Advertising

Commercial advertising is accepted by “The California Surveyor” and advertising rates and information can be obtained by contacting the Editor, P.O. Box 3707, Hayward, CA 94540.

Classified advertising is published at the rate of \$2 per line for members of C.L.S.A. and \$4 per line for non-members and should also be directed to the Editor of “The California Surveyor.”

Sustaining Membership

Membership in the California Land Surveyors Association as a sustaining member is open to any individual, company or corporation who, by their interest in the Land Surveying profession, is desirous of supporting the purposes and objectives of this association. For information regarding sustaining membership, contact the Editor of “The California Surveyor.”

Editorial Material

All articles, reports, letters and contributions are accepted and will be considered for publication regardless of the author’s affiliation with the California Land Surveyors Association. Material should be sent to “The California Surveyor,” P.O. Box 3707, Hayward, California 94540.

EDITOR: Michael S. McKissick, L.S.
 P.O. Box 3707
 Hayward, CA 94540 Phone 415-483-2170

<p>DEADLINE DATES FOR THE CALIFORNIA SURVEYOR</p> <p>CONVENTION..... JANUARY 20, 1978 SPRING..... FEBRUARY 24, 1978</p> <p>Articles, Reports, Letters, etc., received after the above mentioned date will be placed in the next edition.</p> <p style="text-align: right;">Editor</p>

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PRESIDENT'S CORNER



PRESIDENT'S MESSAGE

by James E. Adams, LS

To those of you who are interested in Land Surveying, Cartography and Control Surveying and are not members of the American Congress on Surveying and Mapping, I would like you to consider becoming a member of this organization. The California Land Surveyors Association has given its support to ACSM in its effort to become the surveyors national full service organization. One of the reasons for enlarging the scope of activities of ACSM, is that the surveyor is finding that he needs to be represented before Congress and federal agencies. One example of this need for representation before Congress was a recent bill that was signed into law, which involved coal mining. This bill was detrimental to the surveying profession. Particularly to surveyors in the states of Ohio and West Virginia. Another example is that certain federal agencies have the responsibility for establishing the classification of occupations. In the past, the surveyor has neglected to take the opportunity of assisting these agencies in establishing satisfactory classifications for surveyors. The result of this neglect has again proven to be detrimental to the surveyor. It is hoped that the ACSM can, in the future, reverse these trends in the surveying profession. While these federal laws and regulations may not have a direct bearing on the day to day activity of the surveyor or his profession, their accumulative effects certainly do. One of the reasons that ACSM has not pursued these activities before, is because of the lack of funds. It is hoped that the membership in ACSM can be increased to the extent that these activities can be adequately funded.

I had the opportunity of attending the 4th Annual Northern California Land Surveyors Conference in Chico. The conference was well attended and Walt Robillard gave an excellent presentation on townships and sections. It is gratifying to me to see members of our Feather River/Northern Counties Chapter involved in a conference, such as this. If you have the opportunity to attend the next conference, I would recommend that you do so.

The association is now a member of the Participating Organizations Committee of the National Council of

Engineering Examiners. NCEE is having an increasing influence on the role that the surveying profession will have in our society and it is our intention, as a member of this committee, to be able to give advice on the surveying policies of the council.

This is my last president's message. I would like to take this opportunity to express my appreciation to the many members whose efforts have made the association function. As President, it has been a pleasurable and rewarding year.

C.L.S.A. MEMBERSHIP

C.L.S.A. MEMBERSHIP

Members as of June 30, 1977	743
Sustaining Members	12
Regular Members	419
Associate Members	193
Affiliate Members	48
Student Members	60
Life Members	11

New members, third quarter 1977

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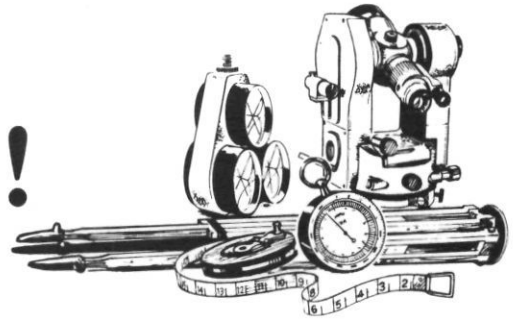
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A DISCUSSION OF THE PROFESSION

September 30, 1971

Mr. Eugene L. Foster, Past President
California Land Surveyors Association (CLSA)
1581 Fifth Street
Sacramento, California 95814

Dear Gene:

Regarding the controversy over whether it is proper, or even legal, for registered Civil Engineers to be exempt from licensing under Chapter 15, Division 3 of the Business and Professions Code to practice land surveying, please excuse me if I seem confused, because I am. It has been brought to my attention that California engineering schools, today, teach practically no land surveying and that in being examined for registration, civil engineers are not tested for their knowledge of land surveying principles and practices.

I call to your attention the recent (March 7, 1970) "Statement of Policy Regarding Land Surveying" officially adopted and issued by the Board of Direction of the American Congress on Surveying and Mapping which reads, in part, as follows:

1. "Land surveying in the United States is a separate and distinct field of professional practice, based on a unique educational background. It requires entirely separate licensing and fully qualified representation on examining and licensing boards."

You have been referred to me as being a member of both the American Congress on Surveying and Mapping and the California Land Surveyors Association, and as a practicing Land Surveyor who has done considerable research of the Land Surveyor licensing acts of California which, I have been informed, date all the way back to the year 1891. I present to you the following questions:

1. Will you please write for me a short narrative outline of the history of these acts from 1891 up to 1939 when, as I understand, the Land Surveyors Act was made a part of the California Business and Professions Code?
2. Why, and in what manner was Section 8731 added to the Land Surveyors Act at the time the act became a part of the Business and Professions Code as Chapter 15 of Division 3?

(I remember vaguely that the Civil Engineers act, at some point in time, contained, in the definition of civil engineering, "geodetic, municipal and topographic surveying." Later those functions were removed from the Civil Engineers Act and made a part of the definition of "land surveying" in the Land Surveyors Act. Then, about ten years ago, the entire definition of land surveying, lock stock and barrel, was again made a part of the definition of civil engineering in the Civil and Professional Engineers Act. This all drives me up a tree.)

3. Can you explain the incidents mentioned in the above paragraph with dates, statute chapters, etc. in such a manner that I can make some sense out of it?
4. Just when and why did the civil engineers get into the act? In other words, the land surveyors act is replete with the expression, "Land surveyor or civil engineer." Am I correct in saying that it seems stupid to say, "a land surveyor or civil engineer may do this—" and "a land surveyor or civil engineer shall do that—" and then go to the trouble of adding a section (8731) to say that a civil engineer is exempt from the licensing provision of the act in order to engage in the practice of land surveying, the same as a licensed land surveyor? What kind of any act do we have here?

Mr. Foster, I am a pretty hard-working land surveyor and either have not had the time or did not find myself in the position of having information available to me so that I could answer these questions for myself. You may be able to answer these questions for me. Your research may even prove to be of enormous value to the profession of land surveying.

Sincerely,

Russell Avery, L.S.

October 12, 1971

Mr. Russell Avery, L.S.
P.O. Box 15146
Las Vegas, Nevada 89114

Dear Russell:

Receipt of your letter of inquiry, dated September 30, in which you ask questions relating to particular aspects of California's laws, over the years, regulating the practice of land surveying and defining the duties of land surveyors, is hereby acknowledged.

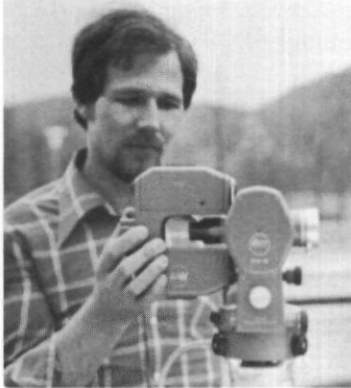
You have been correctly informed. California civil engineers, today, are not educated in, nor are they tested on their knowledge of land surveying principles before being registered. Let's face it. With today's greater body of knowledge in civil engineering, would there be any room left for land surveying in the overflowing four-year civil engineering curriculum?

You have called my attention to the "A.C.S.M. Statement of Policy Regarding Land Surveying." I am very familiar with the background for that statement and am enclosing a copy of the full statement. With that, I will go right to work and try to answer your several questions.

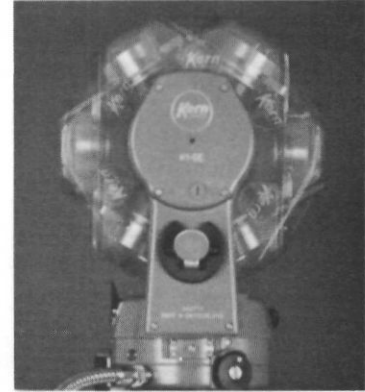
(Continued on Page 8)

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A Discussion of the Profession

(Continued from Page 6)

Question No. 1

In the 1887 General Land Office Commissioner's Annual Report (page 251) there was a list of 924 townships, distributed throughout California, fraudulently surveyed, in whole or in part, by Messrs. Benson, Foreman, Perrin, McCoy, Glover, Woods, Norway, Norboe, Collins, Haughn, Baker, Hansen, Santee, Berdan, Holcomb, Buckley, Hall and Ragsdale, under the so-called "Benson Syndicate Contracts." At that time, 59 of these townships had been resurveyed and 865 remained to be resurveyed.

Four years later, in the year 1891 and fifteen years before the great earthquake and fire in San Francisco, the people of California represented in Senate and Assembly, saw fit to enact Chapter 255, Statutes of 1891, a law "to define the duties of and to license land surveyors." That law was approved by Governor H. H. Markham on March 31, 1891 and became effective on July 1 of that year.

The comprehensive nature of the 1891 Land Surveyors Act is witnessed by the provisions set forth in its 16 sections. Some significant ones follow:

1. Application, references and loyalty oath.
2. Issuance of license by Surveyor General (without charge)
3. Applicant's qualifications.
4. Records relating to examinations and licensing.
5. Appointment of Board members.
6. Meetings and terms of members of Examining Surveyors.
7. Provision for land surveyors seals.
8. Taking of testimony by land surveyors.
9. Definition of duties of land surveyors.
10. Setting of monuments by land surveyors.
11. Requirement of record of survey maps.
12. Duty of County Recorder to record same.
13. Stiff penalty for surveyor failing to file record of survey map.

It is interesting to note that the word "engineer" does not appear in either the L.S. Act of 1891 or the L.S. Act of 1907 which replaced it one year after the earthquake. These two laws covered, continuously, 42 years of land surveying in California.

The most significant change in the Land Surveyors Act, by the 1907 Act was the added provision that, "The Surveyor General shall receive a fee of ten dollars for each license, and five dollars for each duplicate license, issued by him; the fees so received to be paid into the state treasury to the credit of the General Fund as provided in Section thirty-five hundred and seventy-four of the Political Code."

For 42 years, beginning with 1891 and ending with 1933, the year Prohibition was repealed, land surveying in California was defined exactly the same and is shown here:

"Every licensed land surveyor is hereby authorized to make surveys relating to the sale or subdivision of lands, the retracing or establishment of property or boundary lines, public roads, streets, alleys or trails; and it shall be the duty of each surveyor, whenever making any such surveys, except those relating to the retracing or subdivision of cemetery or town lots, whether the survey be made for private persons, corporations, cities or counties, to set permanent and reliable monuments, and such monuments must be permanently marked with the initials of the surveyor setting them."

The foregoing definition prevailing throughout the 1891 Act and the 1907 Act (Chapter 247, Statutes of 1907) until the passage of the 1933 Land Surveyors Act (Chapter 506, Statutes of 1933). These two acts were administered by the California Surveyor General's Office until passage of the 1933 Act on August 21, 1933. After that date, the administration of the Land Surveyors Act and the licensing of land surveyors was turned over to the newly created Board of Registration for Civil Engineers. Chapter 801, Statutes of 1929 created the Civil Engineers Act which did not contain a definition of "civil engineering."

It was not until the following session of the Legislature that Chapter 891, Statutes of 1931 provided a specific definition of "civil engineering," as Section 1a of the Civil Engineers Act. The second paragraph of that section is quite interesting and is quoted here:

"Said term shall include city and regional planning in so far as any of the above features are concerned therein, and geodetic, cadastral, municipal and topographic surveying, but nothing in this act contained shall be construed to repeal, alter or modify that certain act entitled "An act to define the duties of and to license land surveyors, and to repeal an act entitled 'An act to define the duties of and to license land surveyors,' approved March 31, 1891," approved March 16, 1907."

In Chapter 506, Statutes of 1933, the year that the Civilian Conservation Corps were setting up their camps, sweeping changes were made in the Land Surveyors Licensing law, some good, some bad. Perhaps some of the most significant were:

1. Very short definition of land surveying.
2. Transfer of administration to Civil Engineers Board.
3. Introduction of the roster.
4. First appearance of the words "civil engineer."
5. County Surveyor review of record of survey map.
6. Specific exemptions. (There were none before)
7. Mode of private practice.

In the L. S. Act of 1933, the definition of land surveying appears as follows:

"Section 1a. Land surveying within the meaning and intent of this act shall comprise the surveying of areas for their correct determination and description and for conveyancing, or for the establishment or reestablishment of land boundaries or for the platting of lands and subdivision thereof."

This may be a good point to quote Specific Exemptions (Section 13 of the 1933 Act) because it is pertinent to your Question No. 2.

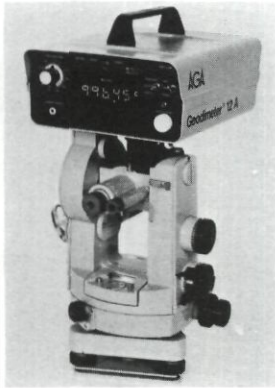
"Section 13. The following shall be exempt from the provisions of this act:

- (a) Officers and employees of the United States of America, practicing solely as such officers and employees.
- (b) Any subordinate to any State, county, city, or city and county officer or to any other civil engineer or land surveyor registered or licensed as required by the laws of the State of California or to a land surveyor or civil engineer exempted under this act

(Continued on Page 22)

AGA

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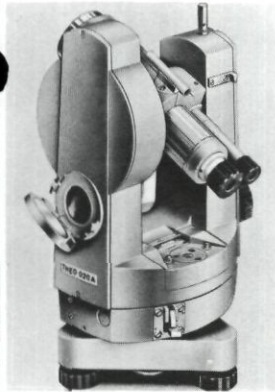


MODEL 78

Medium range EDM using low power visible laser for distances up to 6 miles. The Model 78 is an improved version of the well-known Model 76.

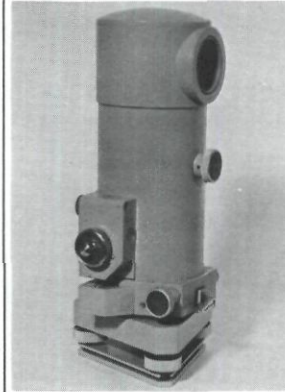
JENA THEODOLITES & LEVELS

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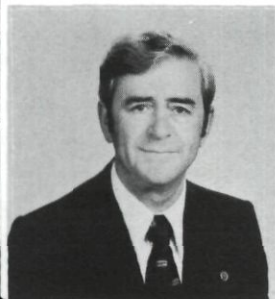
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(Continued from Page 1)

8. Ratified the revised bylaws of the Land Surveys Division.
9. Created a task committee on professional practise standards to investigate and report in March on the need for guidelines in the area of competence, negligence, and gross negligence.
10. Adopted a policy statement on right-of-ways and easements.
11. Authorized publication of an A.C.S.M. Model Sub-division Control Law. A Model Survey Filing Law is nearing completion.
12. Rejected by a substantial majority a Land Surveys Division request that representation on the Board be proportional to division membership. Eleven of the sixteen Board members present identified themselves as Land Surveyors
13. Directed the Finance Committee to report in March on a demand from the Land Surveys Division for a significant dues increase for A.C.S.M. members.
14. Authorized an open forum as part of the March meeting to receive input from the membership.

BURGLARY REPORTED IN SANTA ROSA

Our office was burglarized on or about Thanksgiving day. We are notifying all surveyors and engineers in the area hoping that they will let us know if anyone approaches them with our stolen equipment. We lost just about enough equipment to fully equip one survey crew. The most easily identifiable was our Wild T-I-A transit serial number 84795. It had been modified to accept a Distomat D1-10, although the Distomat was not taken. If you hear anything of this instrument or any other miscellaneous survey equipment for sale, please call us right away at 707-545-5300. Thank you very much.

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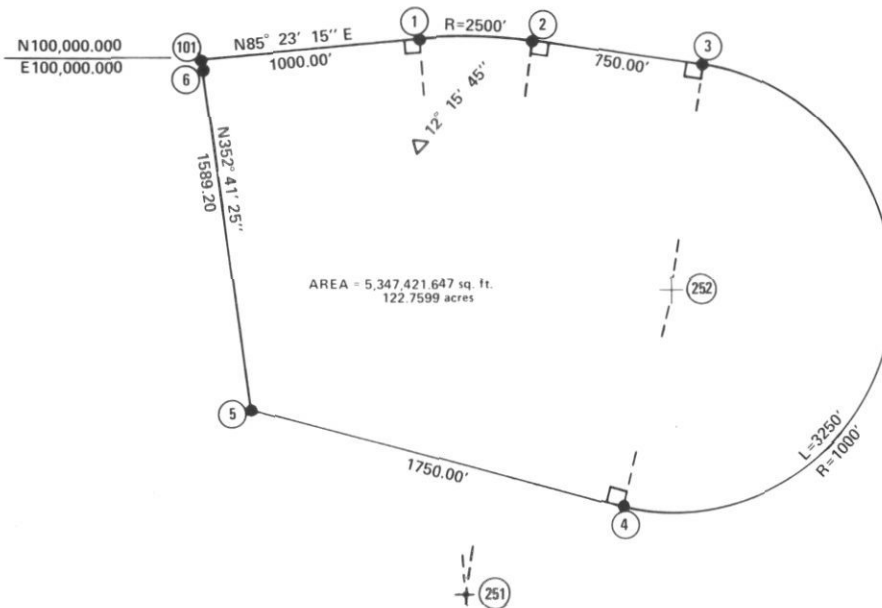
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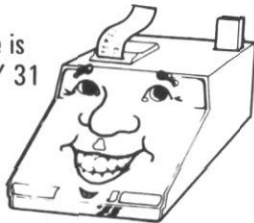
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A Field Party...(Continued from Page 1)

Urbanization has brought great changes in many fields, and surveying is no exception. Certainly notable changes have taken place in both the size of the field party, and the shape and design of some of the equipment they carry.

Recently I acquired and read with great interest, a reprint of a book originally published in 1888, authored by a group of specialists in railroad "construction, development, management and appliances." It turned out to be a rather comprehensive compendium of the experiences and recommendations of leading engineers and experts in the rail transit industry at the time of its original publication.

In view of my two hobbies, I was particularly interested in Chapter I, "The Building Of a Railway," which describes the size, the responsibilities and the work assignments of a railroad survey party. It occurred to me that the contrast between this 1888 recommendation and the present day three-man (or less) survey crew might be of interest also to the CLSA membership.

Quoting pertinent excerpts:

"A full surveying party consists of the front flag-man, with his corps of axe-men to cut away trees and bushes; the transit-man who records the distances and angles of the line, assisted by his chain-men and flag-men; and lastly, the leveler, who takes and records the levels, with his rod-men and axe-men. The chief of the party exercises a general supervision over all, and is sometimes assisted by a topographer, who sketches in his book the contours of the hills and direction and size of the watercourses."

"One tent contains the cook, the commissary, and the provisions; another tent or two the working party, and another the superior engineers, with their drawing instruments and boards. In a properly regulated party the map and profile of the day's work should be plotted before going to bed, so as to see if all is right. If it turns out that the line can be improved and easier grades got to or other changes made, now is the time to do it."

We've dispensed with the separate leveling party; the topographer has been replaced by a photogrammetrist working from aerial photographs, using some rather sophisticated stereo plotting equipment; the cook is down the street at a nearby "Jack-In-The-Box" and a Holiday Inn has replaced the tents.

Or, more likely, a short run on a nearby Freeway takes everyone home to their own ranch-style homes and swimming pools!

After hacking out the foregoing, I ran across another item that supplements the description of an 1880 field party. In 1854, when William Burt authored a manual describing his patented "Solar Compass," he included, not only a comprehensive set of instructions for its use, but also enumerated the needs for provisioning a survey party.

Obviously Mr. Burt anticipated that a McDonald's or a Jack-In-The-Box might not always be handy, as he carefully listed his recommendations for "Supplies of Provisions" for "a surveying company of Six men for Four Months," consisting of:

8	barrels of flour
2½	barrels of clear pork
3	bushels of beans
2	bushels of dried apples
120	lbs of good dry sugar
70	lbs of ground coffee, or a substitute
70	lbs of Saleratus (We know it as baking soda)
1	lb ground pepper
1	small bag of table salt
25	lbs of rice
4	lbs of Castile soap

Frankly, with a diet largely consisting of pork and beans and pan-fried biscuits, there's some doubt in my mind as to whether the quantity of Saleratus (bicarbonate of soda) was sufficient to cover both the biscuit recipe and the indigestion!

I don't know about you, but I had to chew a Maalox tablet just from reading the list.

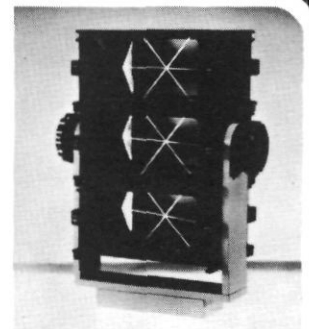
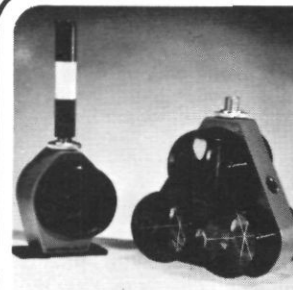
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1"	I.D. x 18"	.49	each
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1"	I.D. x 24"	.58	each
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NOTICE AFFORDED BY RECORD OF SURVEY MAPS IN CALIFORNIA

by Neil J. Cummins, Jr.
March 19, 1977

INTRODUCTION

California's Land Surveyors Act¹ provides for the preparation and filing of maps and other documents² under specified circumstances following either a retracement or original survey of the boundaries of real property. These documents contain much valuable information regarding the location of real property boundaries,³ but are not as readily available to third parties as most other documents affecting the title to real property. This paper will focus on the notice afforded third parties, particularly purchasers, by the filing of a Record of Survey map pursuant to the provisions of California Business and Professions Code, Section 8762. Subdivision and parcel maps, although required to comply with the technical provisions of the Land Surveyors Act,⁴ are not considered because they generally enter the chain of title by reference in the initial conveyance of the created parcels.⁵ Record of Survey maps (hereinafter Records of Survey) differ in that they are prepared at the request of any person having any right or interest in the land being surveyed, or under certain circumstances, no right in the land at all.⁶

What is a Record of Survey?

California's Business and Professions Code, Section 8762, requires a Record of Survey to be filed in the following circumstances:

Within 90 days after the establishment of points or lines the licensed land surveyor or registered civil engineer shall file with the county surveyor in the county in which the survey was made, a record of such survey relating to land boundaries or property lines, which discloses:

- (a) Material evidence of physical change, which in whole or in part does not appear on any map or record previously recorded or filed in the office of the county recorder, county clerk, municipal or county surveying department or in the records of the Bureau of Land Management of the United States.
- (b) A material discrepancy with such record.
- (c) Evidence that, by reasonable analysis, might result in alternate positions of lines or points.
- (d) The establishment of one or more lines not shown on any such map, the positions of which are not ascertainable from an inspection of such map without trigonometric calculations. Any such record of survey filed with the county surveyor shall after being examined by him be filed with the county recorder.

Obviously, a map filed pursuant to subsection (b) or (c) directly affects the future utilization of the parcel and is of particular interest to a purchaser of the real property.

It should be noted that a Record of Survey does not affect the record title to property -- its function is limited to a full presentation of the facts as the surveyor finds them. Normally, the surveyor will advocate a position for the lines surveyed and disclose conflicting evidence found by note on the map; however, in extreme cases, the surveyor may not adopt any position for the lines in question and will limit his findings to a presentation of the evidence found. Where strongly conflicting evidence is found, the county surveyor will often place a note on the map drawing attention to that fact pursuant to California Business and Professions Code, Section 8768. A Record of Survey's effect is on the location of real property, as opposed to title. In the case of a Record of Survey showing an alternative position of lines, the filing of the Record of Survey is merely a disclosure of the problem, even though the surveyor may have shown a solution which in his opinion is correct.

The effect on the marketability of the record title, however, may be pronounced. Normally the effect of a Record of Survey showing conflicting positions is most harmful to the purchaser of land for development, who must properly establish the exterior boundaries of his property in order to subdivide the interior. Also such a survey is potentially harmful to an occupier of land who constructs improvements within the area of conflict without a notice of the survey.

Does a Record of Survey afford constructive notice?

A Record of Survey is not necessarily made at the request of a person having any interest in the property surveyed and, even if made at the request of such an owner, may show evidence affecting other property not owned.⁷ Thus a Record of Survey does not normally appear in the chain of title, even though, following examination by the County Surveyor, it must be filed with the County Recorder⁸ (unless it fails to comply with Business and Professions Code, Section 8762.5, in that it is an unauthorized division of land.)

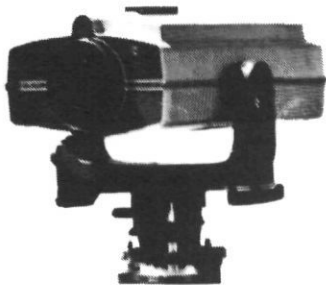
If a Record of Survey (which is a public record) is not in the chain of title⁹ it does not operate as constructive notice to a purchaser.¹⁰ The current standard coverage title insurance policy in California restricts its coverage to items shown by public records and defines "public records" as those records imparting constructive notice.¹¹ Such a policy therefore does not protect against a loss resulting from the effect of a Record of Survey not in the chain of title.¹²

Should the holding of *Stearns* be overturned?

The case of *Stearns v. Title Insurance and Trust Co.*¹³ is an excellent example of the precept that hard cases make bad law. In that case the plaintiff had previously owned the property in question and was familiar with the dispute regarding his boundary. The parcel was acquired by the state for a freeway and the plaintiff repurchased the remainder, obtaining the title insurance policy sued on at the

(Continued on Page 21)

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New Historical Society Established

On October 14, 1977 during the 1977 ACSM, a group met to establish the "Surveyor's Historical Society". This meeting was an outgrowth of CLSA committee and a meeting last month of ACSM-NCS.

A provisional board of trustees was selected: F.D. "Bud" Uzes, State Lands Division, Chairperson; Robert W. Curtis, Healdsburg, Vice Chairperson; Myron A. Lewis, Hayward, Recording Secretary; Michael K. Welch, Santa Marie, Treasurer; Roy Minnick, State Lands Commission and Donald J. Foley, Pacific Gas and Electric, Membership; Cecil E. Hanson, Pasadena, Historical Instruments; and Curtis M. Brown, La Mesa, Historical Deeds and Map Records. An elected board will be established after a membership is established.

The purpose and aims of the society will be to preserve and display history, records, equipment, etc. of survey related occupations including that from land surveying, aerial photography and title companies. Historical publication will be undertaken along with a historical column submitted to existing survey publications.

Membership is open to anyone interested in survey history. Charter membership will be \$100.00 for 100 people to get the organization started. Special membership of \$20.00 will be for the other individuals interested in joining. Other types of membership will be determined later.

For additional information and membership applications, write to Roy Minnick at Landmark Enterprises, 10324 Newton Way, Rancho Cordova, CA 95670.

What is "The Education of a Professional"?

In one of the most haunting lyrics of the rock music era, the Beatles sang: "Once there was a way — to get back home..." This might be the story of life in the late twentieth century. "Once there was a way..." Once goals were clear; rewards were clear; "a way" was clear.

Once there was a way to obtain a professional education, be licensed, and live happily ever after. Those days are gone forever. Degree obsolescence is today's way of life. The "half-life" of knowledge in any given profession may now be as low as two to three years. The degree, in short, is today the beginning of "the education of a professional."

Today it has become clear that even continuing one's education is not enough. The acceleration of knowledge has assumed something of the nature of atomic fission — new knowledge whirling in at such speeds that it does not merely occupy the seat next to the degree, but actually blasts the nucleus out of a much one-basic knowledge and replaces it with the new.

Suddenly re-education is here. This is the need to re-study one's beginnings — to separate out, then discard, those areas of earlier knowledge that actually stand in the way of the new — while re-education's accompaniment, continuing education, feeds in a constant stream of the latest in discovery.

No longer is there a clear straight line to any area of professional life. With the expanding total body of knowledge forcing professionals into specializations and sub-specializations, a final (at least as of this moment, the final!) education component has been added — the need for interdisciplinary/multidisciplinary study.

Therefore, a complete rethinking of what constitutes the preparation of a professional is now in order, indeed underway. It is no longer necessary, or even wise or feasible, to try to cram the "all" of professional education into undergraduate/graduate programs. If we begin operating under the concept that obsolescence is the foregone fate even of much basic cognitive study, we will find such study becomes rather the gate of entry to a lifetime challenge in ever newer, broader, deeper realms of learning and accomplishment.

Phillip E. Frandson
Dean, UCLA Extension

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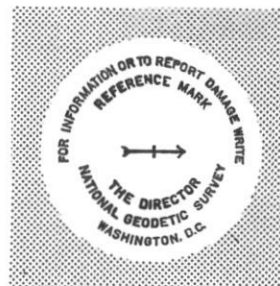
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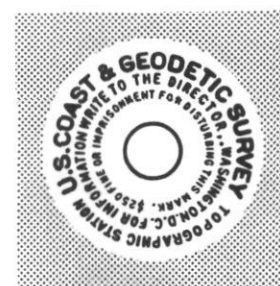
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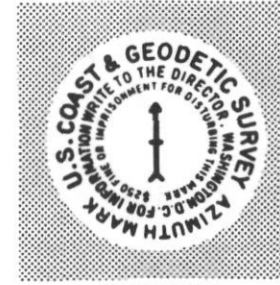
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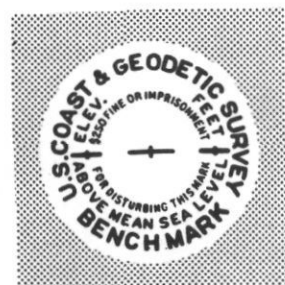
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Notice Afforded...(Continued from Page 14)

time of the repurchase. The court decided the case solely on contract principles. It held that the failure of the statute allowing Records of Survey to be filed with the county recorder¹⁴ to recite that such a filing constituted constructive notice operated to deny recovery under title policy which excluded public records whose filing did not constitute constructive notice.¹⁵

Had the equities of the case been more balanced, the court could have based as alternative finding on the following logic: A Record of Survey fits a broad interpretation of the definition of "conveyance" of Civil Code, Section 1213 and 1215.¹⁶ The legislature has recognized the special character of Records of Survey by making special provision for tract indexing¹⁷ outside of the grantor-grantee index system. It is therefore not reasonable to infer that the legislature did intend for Records of Survey to operate as constructive notice.¹⁸

Since the 1971 holding of **Stearns**, two changes in California law have occurred which also tend to support the overruling of **Stearns**. The first is the adoption of Government Code, Section 27288.1, which has been interpreted as requiring the listing of names of record fee owners on the Record of Survey for subsequent indexing in the Grantor-Grantee Index¹⁹ by at least the Los Angeles County Recorder and the California County Recorder's Association,²⁰ although not by all California County Recorders. In counties where a Record of Survey has been indexed in the grantor-grantee index pursuant to this code section, there would seem to be no reason not to give the Record of Survey the status of any other conveyance.²¹

The second chance was the discarding of contributory negligence as a defense by California in 1975.²² The existence of the contributory negligence defense in 1971, coupled with the previous ownership of the property in question by Stearns undoubtedly operated to foreclose a full discussion of negligence issues under which, as discussed infra, it would appear a substantially different result follows even if the specific holding that a Record of Survey does not operate to give constructive notice is followed.

Can a title company be held liable for failure to disclose a Record of Survey?

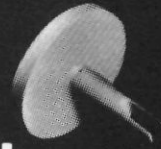
In the context of the typical California real estate transaction, a title insurance company is engaged to perform two services. First, the company prepares a preliminary report listing all encumbrances which the company is able to find affecting the property. This report is examined by the purchaser for objectionable items, which the purchaser will then request the seller or the title company to remove.

Eventually, through amendment, a preliminary title report will be issued in a form acceptable to all parties. The title company will then prepare a policy of title insurance in favor of the purchaser.

In the course of the procedure just described, it is important to recognize that the title company is operating in a dual capacity: as to the preliminary report, it is an abstractor; as to the title policy, it is an insurer. Stearns has effec-

(Continued on Page 23)

Berntsen magnetic survey monuments



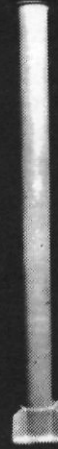
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A Discussion of the Profession

(Continued from Page 8)

or under Chapter 801, Statutes of 1929, and any amendments thereto insofar as he is acting in such subordinate capacity."

Question No. 2

Your question was, "Why and in what way was Section 8731 added to the Land Surveyors Act at the time the act became a part of the Business and Professions Code as Chapter 15, Division 3?"

I'm glad you asked that question, Russ, because there is a lot of mystery surrounding Section 8731. There has been no legislative bill found adding this section to the Land Surveyors Act.

Chapter 41, Statutes of 1939 is the first time Section 8731 ever appeared in print, and the first time civil engineers were ever specifically exempted from licensing to practice land surveying, by the Land Surveyors Act.

On page 3287 of the 1939 Statutes, under the headings, "Appendix, Cross-Reference Tables, Origin of Business and Professions Code Sections," we find that Section 8731, of (Chapter 15, Division 3 of the Code) found its origin in Section 13, Chapter 506, Statutes of 1933 (page 1288). That is Section 13 of the 1933 Land Surveyors Act quoted above and I will challenge anyone to read an exemption from licensing for civil engineers into that section. That section is speaking of "exemption from the provisions of this act" and relates only to "subordinates . . . in so far as (they) are acting in such subordinate capacity."

I believe that Section 8731 was simply a mistake. Someone read Section 13 incorrectly.

In the same act (1933), the last line of Section 1 reads, ". . . or specifically exempted in accordance with the provisions of this act." Nowhere in the 1933 Act is any person "specifically exempted under the provisions of this act," except in Section 13, where only Federal officers and employees and specific groups of subordinates "in so far as they act in such capacity" are exempt from the *provisions* of this act.

In this same vein, there is a dire mistake in the following section (Section 14) (first 3 lines) "Any person, who is not legally authorized to practice land surveying in this State is herein provided for and shall so practice, except he be exempt under this act; etc." That language sounds to me as "if he be exempt under this act (then he) shall *not* so practice." But that is not what is meant. I think the word "not" was omitted. To make sense, it should read ". . . and shall *not* so practice, except he be exempt under this act."

Question No. 3

The words, "geodetic, municipal and topographic surveying" have remained in the civil engineering definition for forty years, either as the five words written above or implied, in part, in subsections a, d, and e of Section 8726 of today's Land Surveyors Act. (Chapter 15, Division 3, B and P Code.)

'Cadastral surveying' was not found in the definition of civil engineering for the fourteen years between 1945 (Chapter 1381, Statutes of 1945) and 1959 (Chapter 408, Statutes of 1959). Since 1959 the entire Land Surveyors Act, by reference, has been included in the definition of 'civil engineering.'

In the statutes of 1933 and 1935, in the land surveyors act, the definition of land surveying still remained property boundary surveying only. It was not until 1941 (Chapter 834, Statutes of 1941) that the modern definition of land surveying, as we now know it, containing "geodetic, municipal and topographic surveying," appeared.

In Chapter 36, Statutes of 1936 the Civil Engineers Act first contained the expression as stated today in B and P Code Section 6743, as follows: "This Chapter does not affect Chapter 15 of Division 3 of this Code, relating to surveyors, except insofar as this chapter is expressly made applicable." (The only reference to land surveyors in the act.) The only place in the Civil Engineers Act where it is expressly made applicable is in the final statement in the definition of 'civil engineering,' Section 6731.

Question No. 4

With reference to page three, the words "or civil engineer" and "or registered civil engineer" first appeared in the Land Surveyors Act in 1933. It was four years after the birth of the Civil Engineers Act and, even though civil engineers were not to be allegedly exempted from licensing for six years, yet the brand new definition of the practice of civil engineering adopted in the statutes of 1931 contained "geodetic, cadastral, municipal and topographic surveying." Thus some might have felt that since civil engineers were going to be doing surveying, they should be mentioned in the Land Surveyors Act as being *able to make the surveys and to record maps of the surveys* they were to do. However, this seems to be a far cry from the modern section in our act which states that (not only) a registered civil engineer (but) (also) a civil engineer exempt from registration under Chapter 7, of Division 3 of this code (that means a subordinate of a registered civil engineer) 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 as a licensed land surveyor. I want to make my following statement very clear:

"One of the most important duties and responsibilities of a licensed land surveyor is to qualify himself by taking the examination, passing it and becoming licensed."

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Notice Afforded...(Continued from Page 21)

tively eliminated recovery under the title policy, but the title company still has liability as an abstractor on the preliminary report.

Although the duty of an abstractor was formerly regarded as purely contractual,²³ recently recovery has been allowed in tort for negligence, not on the title policy (which is a *contract for insurance*), but on the preliminary report, which is in effect an abstract and subjects the abstractor to a tort duty of care as an expert.

One of the earlier cases recognizing the principle was **Dorr v. Massachusetts Title Insurance Co.**²⁴ where it was recognized that a title insurer could also sustain liability for negligence while acting as an abstractor.

California courts began to recognize the tort liability of abstractors in **J.H. Trisdale Inc. v. Shasta Co. Title Co.**²⁵ permitting an action in negligence for faulty preparation of a title report. Subsequently, in **Hawkins v. Oakland Title Insurance and Guaranty Co.**²⁶, the court reasoned that Section 552 of the Restatement of Torts²⁷ was applicable to the preparation of the preliminary title report relied on by the purchaser, as distinguished from the policy of title insurance later prepared.²⁸

Thereafter, in **Viotti v. Gioni**²⁹ an exculpatory clause in a litigation report prepared by a title company was held insufficient to insulate the negligent preparator from liability. Most recently, **Jarchow v. Transamerica Title Insurance Co.**³⁰ allowed recovery for emotional distress caused by the title company's failure to defend and clearly stated that a title insurer who prepares preliminary title reports in con-

nection with the issuance of a title policy assumes a duty more rigorous than that assumed in the issuance of a title report.³¹ **Jarchow** uses the term public records in connection with the abstractor's liability without limiting reference to constructive notice; **Jarchow's** standard is that of **Contini** "the abstractor must report all matters which could affect his client's interests and which are ordinarily examined when a reasonably diligent title search is made."³²

Therefore, a title company can be held liable for failing to show a Record of Survey on a preliminary title report on the basis that it breached the standard of care owed as an abstractor. The title company will breach that standard of care if it owed a duty to discover the existence of the Record of Survey.

What is a title company's tort duty regarding discovery of a Record of Survey?

"If the abstractor examines a title, it is incumbent upon him to make a complete examination, and to point out the defects, if any."³³ A title company generally has its own plant, and indexes the public records to parcels of property, rather than by using the various indices kept by the county recorder.³⁴ If a title company indexes Records of Survey into its records, it is obvious that the title company is capable of readily determining the existence of a Record of Survey affecting a given parcel. The author's experience with current title practices in Southern California indicates that most title companies do so index Records of Survey.

(Continued on Page 26)

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5. Any person practicing Land Surveying by virtue of his employment in public services who meets the guide lines established in 6 below.
6. The phrase "practicing Land Surveyor" as used in 3, 4 & 5 above shall refer to one who has been in responsible charge for a period of not less than 8 years (up to 4 years of higher education of a satisfactory character may be substituted) in any field of service identified as Land Surveying in any existing or future State statute governing the registration of Land Surveyors. The cited record of these qualifications having been verified and approved by the Land Surveys Division Membership Committee.

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Hefty Damages Awards Upheld in R-O-W- Dispute

An appellate court of Indiana has affirmed awards of compensatory and punitive damages totaling more than \$110,000 in cases involving hasty action by a right-of-way survey crew.

The plaintiffs were two landowners in Clay County, Indiana, whose land lay in the path of a proposed 765-KV transmission line. In October 1974, Indiana & Michigan Electric Co. was surveying the proposed route prior to commencement of efforts to acquire the land.

Upon reaching the land of one plaintiff the crew found a crop of corn 10 to 12 feet high. In order to clear a path for their survey, the crew knocked down approximately 1800 feet of the cornfield, in a swath four to eight feet wide. On the land of another plaintiff the crew cut approximately 23 saplings out of a wooded area in order to obtain a line of sight survey. All of this was accomplished without authority or permission of any kind.

The landowners then sued for trespass and proved damages of \$120 and \$300, respectively. In addition to the actual damages, the jury awarded punitive damages of \$60,000 in the first case and \$50,00 in the other.

Upon appeal the court first held that the circumstances supported the conclusion that the crew had gone beyond the bounds of normal surveying when it cut the trees and crops. This action amounted to a substantial interference with the rights of the owners.

Next the court affirmed the award of punitive damages, over objection that the amounts were unreasonable and excessive. It conceded that normally punitive damages must bear some reasonable relationship to the actual damages. However, the wealth of the defendant is also one of the factors to be considered in an award of punitive damages. In view of the fact that the company had substantial assets and its year end income had amounted to more than \$43 million, the court did not deem the awards to be so excessive as to require that they be set aside.

(Indiana & Michigan Electric Company v. Stevenson, Ind. Ct. of App., 1st Dist., No. 1-776-A-121, June 15, 1977)

Notice Afforded...(Continued from Page 23)

Obviously, however, if a title company does not maintain its own plant, but relies on the indices of the county recorder to search title for preparation of the abstract, no notice, actual or constructive, will be given unless the Record of Survey would be found by an abstractor in the course of making the search reasonably expected of him in the diligent performance of his duties.

If the name of the fee owner appears in the grantor-grantee index either because of the application of Government Code, Section 27288.1¹⁵ or because of the past practice of many recorders of indexing the Record of Survey in the grantor-grantee index under the name of the person authorizing the survey,¹⁶ then there can be little doubt that

a proper search by an abstractor would find the Record of Survey. The abstractor would thereby have actual notice and would be required to disclose the existence of the Record of Survey in the abstract/preliminary report.

If, however, the Record of Survey is indexed only in the tract index required by Business and Professions Code Section 8770, there arises a question as to the duty of an abstractor to consult such an index, complicated by the fact that to the author's knowledge no county recorder in California maintains such an index in usable form.¹⁸ The only available authority on this point comes from states having tract indexing for all or most all recorded documents and indicates a split.¹⁹ The fact that numerous other states have adopted the tract index for Records of Survey while maintaining statutory grantor-grantee index systems,¹⁹ however, gives some impetus to the thought that case law on the point is likely in at least one jurisdiction in the near future.

In the meantime, the best that can be said is that most title companies should acquire actual knowledge of any Record of Survey affecting property on which a preliminary report is being prepared. Having acquired actual knowledge, their subsequent liability for any adverse effects resulting from their failure to disclose that information to the purchaser appears clear.

Conclusion

From the above, the following conclusions can be drawn regarding the notice afforded by the filing of a Record of Survey in California.

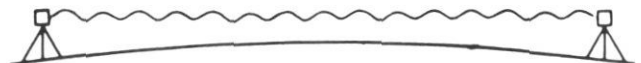
(Continued on Page 27)

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(Continued from Page 26)

1. Pursuant to the holding in **Stearns**, a Record of Survey does not constitute constructive notice. There exists, however, substantial justification for a future ruling that **Stearns** should be limited to its facts.

2. Regardless of the constructive notice afforded by the filing of a Record of Survey, it appears that a title company issuing a preliminary report within an area affected by the Record of Survey will be liable to any third party relying on the report for adverse effects resulting from failure to disclose the Record of Survey unless the title company can show that it was unreasonable to expect the title company to discover the Record of Survey.

3. Because current practises by Title Companies and County Recorders virtually assure actual notice of the existence of a Record of Survey to the Title Company, it would appear that the vast majority of purchasers (those requesting title insurance) should receive either actual notice of the Record of Survey or be able to recover damages from the Title Company for any adverse effects of an undisclosed Record of Survey.

California Land Surveyors Association
Publications
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BOOK NOOK

1. *Shore and Sea Boundaries* (1962) Reprint 1975—Aaron L. Shalowitz, U.S. Department of Commerce Publication #10-1
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2. *Tide and Current Glossary*—U.S. Department of Commerce, N.O.A.A.—National Ocean Survey (1949) Revised 1975. Special Publication No. 228 . . . \$ 0.75 ea.
3. *Proceedings; Water and Water Related Boundaries Workshop II, May 20 & 21, 1977, Irvine, CA* (262 pages)
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