

Institutional Affiliate of American Congress on Surveying and Mapping.

The California Surveyor

No. 77

The Voice of the Land Surveyors of California

Winter, 1985



CLSA CONFERENCE '85
"Our Western Heritage"
May 22-27, 1985
Town & Country Hotel
San Diego, California

(More Convention information on page 17)

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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 to 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."

Personnel

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Advertising

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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*.

Unless indicated, all articles in this publication are prepared by the editor.

EDITOR: J.E. Terry, L.S.I.T.
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Cover Photo

San Diego, Site of the CLSA Conference '85
San Diego Skyline: Nestled between mountains on the east and the Pacific on the west, San Diego's burgeoning skyline is rapidly becoming a symbol of the city. In the foreground is the southern tip of Shelter Island, a man-made peninsula in San Diego Bay.
 Photo released by: San Diego Convention and Visitors Bureau

DEADLINE DATES FOR THE CALIFORNIA SURVEYOR

Spring March 15, 1985
 Summer June 15, 1985

Articles, Reports, Letters, etc., received after the above mentioned date will be placed in the next edition.

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President's Message

PRESIDENT'S MESSAGE

By the time this message is published, I will have attended the January CLSA Board of Directors meeting for the first time as your President, representing the members of the Association. I am honored to have the opportunity to join together with this Board representing members throughout the State of California for the purpose of conducting business and establishing direction for such a prestigious organization. The Board members are elected by the individual Chapters and the officers which are elected by the membership at large, to represent and put forth your interest as a Land Surveyor in the State of California. If your interest, concerns, and positions are to show up at the State level, you, the individual surveyor, whether presently a member of this Association or not, must take responsibility for your profession by being in contact with these representatives and communicating to the appropriate committees or officers, your concerns and suggestions. We need your help and input to do the best job.

CLSA's track record has been impressive in the last few years and can be additionally improved by increasing the membership, so that it truly represents the majority of surveyors in California. If you are not currently a member, consider the possibilities that, by joining, you can make a difference in your profession from your own individual attitudes and effectiveness, up through the State Board of Directors' attitudes and effectiveness.

Presently, less than 1/3 of our membership has participated in the State organization on committees or as a member of the Board of Directors or as an officer of the Association. Consider the effectiveness yet to be realized by your contribution on the State level. If you have served, then consider renewing your dedication to the Association. Your experience is an asset this organization needs.

Professionalism is a popular topic among surveyors in these times. This being my first opportunity to address the membership, it seems appropriate to state my views on the subject.



Michael R. McGee

President

California Land Surveyors Association

The criteria for professionalism is more a statement than a qualification. Surveying is an art, although it uses scientific methods for gathering evidence; analysis and conclusions are empirical, based on a clear understanding of the law and a comprehensive of the standards of the profession. Professionalism is created by participating in a professional society that establishes a common bond. By furthering education and at the sacrifice of some individuality, a common ground is created, a bond of mutual respect, a conventional wisdom, and support that raises the stature of the individual to that of a professional. Each and every surveyor has a responsibility to themselves for the quality of their practice and to their peers for the quality of their profession.

If you have any questions, concerns, or would like to contribute your efforts in the form of time, please call or write to our Executive Director, Dorothy Calegari or myself at the following locations:

Dorothy Calegari, P.O. Box 9098
Santa Rosa, CA 95405,
(707) 578-6016

Michael R. McGee
McGee Surveying & Mapping
837 Third Street, Eureka, CA 95501
(707) 443-7308

Michael R. McGee, L.S.
President

MESSAGE FROM THE OUTGOING PRESIDENT:

The year is over. It is a time to look back and reflect. But to look back only as a "backsight" to guide us in going forward.

This has been quite a year. The Surveying Profession has been recognized with National Surveyors Week. We have had a successful conference at Lake Tahoe. We started a state wide Professional Practice Committee and have established a forum where the surveyor in private practice can be heard. We have started a "news letter" to keep the profession more informed of the events that affect us all and have worked with other professional associations in refining the Land Surveyors Act. Towards that end, our new legislative advocates, Winner/Wagner and Associates have added the very professional and very necessary touch needed for our legislative efforts.

We need to look forward, but with pride that comes from our heritage. I have often teased that surveying is the oldest "Honorable" Profession. History shows us that in order to assess and tax the rich river bottom land of the Nile in 4000 B.C., Egypt, surveyors were already there. In the Bible, before the office of High Priest was created, surveyors were already there, "setting their neighbors landmark." And as a word of warning, "woe be unto them that moveth their neighbors landmark."

In our own country, our heritage includes George Washington, Thomas Jefferson and Abraham Lincoln, to a name a few.

In 1891, California was the first state to license surveyors, and we were the first science discipline to be licensed.

We have a profession to be proud of. But then how should we act? With smugness? With conceit? With contempt for others? Of course not!

But if we are to use our heritage as a backsight, we need to look at organization and structure. Washington demanded absolute obedience from his troops. He received it because he earned it and his men respected him. But then he represented a cause and not himself.

Lincoln had a dream and a faith in

President's Message (continued)

democracy. He was a man of vision who saw a country "of the people, by the people and for the people." To enforce those principles, he waged war. For principles too need discipline and organization, then can people as government work together to provide for the common good.

So surveyors should walk forward with an inner pride that puts forth an inner glow. A light that can not be hidden. If that light glows, then by our own pride we too have discipline and organization working together to provide for the common good.

The most distressing words I have ever heard are: "but I am only a surveyor." Should this then be an excuse not to be professional, not to work together, not to support elected leadership, and if we act this way, who is to blame?

The one involved because there is not a majority with the courage to speak out and protect our heritage? Or is it the fault of those who don't get involved and then complain about the results? But then, what kind of professional does not get involved and complains? "Is it only a surveyor?"

My dear friends, if we can not see ourselves as a professional, with order, structure and an inner pride, then how will society view us?

This then begs the final question. Who is responsible? I suggest it is all of us.

If we could all stand in front of a mirror and look through and see our heritage, would we be proud of what we see? That answer is obvious. We are all proud of the heritage we share as surveyors.

But what if those surveyors in our past, who gave us our heritage, would they have the same pride

looking at us as we have in looking back at them? To answer this question, we should each examine ourselves closely.

Suppose that you could step through the mirror and from the other side look into the future. Will there be pride in what we see in the future surveyor? That my friends depends on if there is pride in the person looking back at you.

James R. Dorsey, L.S.
Past President
California Land Surveyors
Association

CALTRANS SAYS SURVEYORS MUST PAY BEFORE THEY CAN SURVEY!

CLSA President James Dorsey recently wrote to Caltrans requesting that Caltrans maintain crews to be made aware of new State Law: AB2555, Statutes of 1982, now Civil Code 846.a,b&c which probes that the owner or tenant who owns or controls property is responsible to provide access, as specified.

Caltrans response is printed here in full for the reader to judge and decide for himself.

Dear Mr. Dorsey:

The California Department of Transportation (Caltrans) is charge with the care and protection of state highways (Streets and Highways Code Section 660 Et. Seq.). In carrying out this duty, Caltrans issues encroachment permits.

Encroachment permits are required for surveyors who wish to work on conventional highways. Caltrans issues annual encroachment permits for this purpose. The fee charged for this permit is \$80.00

and is for the cost to the Department for administration and review as authorized by Statutes 671.1.

Caltrans doesn't deny the surveyor's right of entry, but only controls the way surveyors work to assure the safety of the traveling public, the surveyors and the integrity of the highway.

The encroachment permit, or a copy thereof, must be kept at the site of the work and must be shown to any representative of Caltrans or any law enforcement officer on demand. Work shall be suspended if the permit is not at job site.

The Caltrans maintenance people are only carrying out the duties imposed on Caltrans by Streets and Highways Code Section 660 Et. Seq. when they find surveyors working in the state highway right-of-way without a permit.

Thank you for alerting us to this misunderstanding. I am sure you are as concerned as Caltrans is regarding the safety of the traveling public and surveyors.

*Sincerely,
James B. Borden, Chief
Division of Transportation
Operations*

If we have to pay Caltrans for the right we have to occupy a monument, then why not every city and county. A surveyor who lives in a metropolitan area and practices in more than one county could be charged several thousand dollars per year.

Each and every surveyor is urged to write his or her State Senator and Assemblyman and inform them of this situation.

Only by all of us getting together can we protect our existing rights.

James R. Dorsey, L.S.
Past President, CLSA

News Briefs

COFPAES

EVENT: 13th Annual Federal Programs Conference

SPONSOR: COFPAES—The Committee on Federal Procurement of Architectural/Engineering Services

DATE: March 25-27, 1985

SITE: Loews L'Enfant Plaza Hotel
Washington, D.C.

TOPIC: Federal Agency presentations on procurement budgets, practitioner sessions on successful marketing techniques, and other information for architect-

ture, engineering, surveying or mapping firms interested in federal contracting.
CONTACT: COFPAES, c/o ACS
210 Little Falls Street, Falls, Church
VA 22046, (703) 241-2446

A 3-lb. Giant.

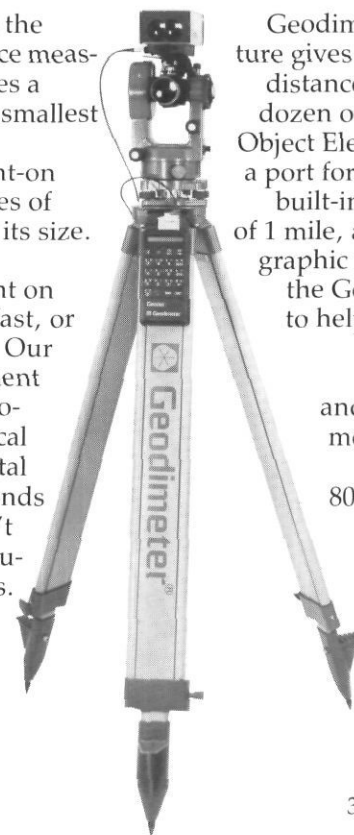


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385 Bel Marin Keys Blvd., Suite F, Novato, CA 94947

Articles

The Office of the State
Surveyor General
(A Few Biographical Notes)

SENECA H. MARLETTE
Third State Surveyor General
Term of Office: 1854-1856

Seneca Hunt Marlette, a native of Syracuse, New York, was born January 18, 1824. After taking a degree in Civil Engineering from Rensselaer University, Marlette worked for the New York and Erie Railroad. He then traveled to San Francisco in 1849 and, for a time, worked as a Surveyor for William M. Eddy in the City of San Francisco's City Surveyors Office. The April 1, 1850, Editor of the ALTA California reported that Marlette withdrew as a candidate for the position of City surveyor of San Francisco in favor of Mr. Eddy; the assurance of a job appears to have been a part of the agreement to withdraw.

S.H. Marlette served as County Surveyor of Calaveras County during 1852 and 1853, and later won election to the State Surveyor General's position; he assumed the duties of that office on January 2, 1854, just sixteen days short of this thirtieth birthday.

During his service as the State Surveyor General, Marlette's abilities and competence were acknowledged as superior. He suffered, however, with low pay, lack of a reasonable budget, and far too many duties. In 1855, the State Legislature ordered the Surveyor General to survey a good wagon road over the Sierras; however, no money was made available for the work. Nonetheless, Marlette managed to raise the sums needed and got the job done. The California Historical Society, in 1938, speaks of that fact as follows:

"S.H. Marlette, a resident of Benicia, California, in 1854 became Surveyor-General of California. He was recognized as California's first road builder. Against many odds, under his direction the road was built over the Sierra to Carson Valley, now the route followed by the State Highway from Sacramento through Placerville to Lake Tahoe, thence into Nevada. The Virginia City Water Supply comes from Marlette Lake, which was named for him. In order to reach the lake, a

tunnel three thousand feet long beneath the dividing ridge of the Tahoe and the Great Basin had to be dug at a cost of two million dollars. When the water reached the Comstock on August 1, 1873, there was great rejoicing."

Upon leaving State service, Marlette worked as a private Surveyor in Calaveras County, and later in Nevada. In 1860, he was elected to the office of County Surveyor of Nevada's Carson County. In successive moves, he served as the County Surveyor of Storey County, and in 1864 as Nevada's first State Surveyor General. Marlette left that position in 1868 after two terms in office.

S.H. Marlette pursued private lumber interests after his public career, and at age 63 started the Mentone Irrigation Company. He remained active in the Company for the next twenty-four years.

In 1874, Marlette married Alice Ingham, of California. They eventually settled in southern California. Seneca H. Marlette died August 24, 1911, in Glendale; Alice Marlette died January 24, 1914, in Los Angeles.

S.H. Marlette was one of seven children. The name is of French origin, but his ancestors entered the country before the American Revolution. Writers have spoken well of Marlette; historian J.M. Guinn's view is summed up in these favorable terms: "The pioneer days of General Marlette have resulted in a material upbuilding for California, for he brought with him to the State the ability and perseverance which alone could give to the commonwealth its impetus toward the position it now occupies among its sister states of the Union."

—Herb Maricle

This series originally appeared in various editions of "California Landword," a monthly newsletter for the employees of the California State Lands Commission.

Herb Maricle is an associate land agent for the commission with a flair and interest for geneological research.

This is the third paper of the ongoing series.

SURVEYORS GENERAL FOR CALIFORNIA 1849 to 1929

NAME	ASSUMED OFFICE
Whiting, Charles J.	Dec. 22, 1849
Eddy, William M.	Jan. 5, 1852
Marlette, Seneca H.	Jan. 2, 1854
Brewster, John A.	Jan. 7, 1856
Higley, Horace A.	Jan. 4, 1858
Houghton, James F.	Jan. 6, 1862
Bost, John W.	Dec. 2, 1867
Gardner, Robert	Dec. 4, 1871
Minis, William	Dec. 6, 1875
Shanklin, James W.	Jan. 5, 1880
Willey, Henry I.	Jan. 8, 1883
Reichert, Theodore	Jan. 3, 1887
Wright, Martin J.	Jan. 7, 1895
Woods, Victory H.	Jan. 5, 1903
Kingsbury, W. S.	Jan. 7, 1907
Office Abolished	— August 14, 1929

THE SURVEYOR IN COURT by Quintelle Cole

Having undergone several experiences of helping the surveyor at our house prepare for court—after being advised by phone at 4 p.m. on Friday about a court case scheduled for 10 a.m. the following Monday, or by an attorney suggesting they get together a few minutes just before court convenes the next day—looked forward to sitting in the audience for the 1982 Association Convention to learn how it was supposed to be done when the surveyor goes to court.

Through the years we have heard speakers at short courses and conventions address this particular subject only as segments of other programs; therefore, we were particularly pleased that an entire convention program was being set aside for an area becoming increasingly important to surveyors.

The convention inspired me to assemble my notes and comments so they would be of benefit to attorneys, as well as surveyors and other interested individuals. The information that follows is written strictly from a layman's point of view.

Preparing for the Courtroom Appearance

When the attorney calls to advise that you are going to court, ask if you are being called as an expert witness or as a lay witness. Nine times out of 10 you will be an expert witness.

An expert witness is one who is qualified to testify in a professional field, while a lay witness is one who has physically observed something in the field—such as a fence having been there a long time.

Obtain a copy of the case documents from the attorney before preparing to go to court. As an expert witness, you may be able to provide additional information to the case to make it complete. The attorney needs a complete understanding of what the problem is in order to present it in court. Discuss with him what questions he will ask you in court. Advise him if you need to tell the bad as well as the good—don't compromise your moral obligation.

Consult with the attorney about the dress code preferred by the judge. A coat and tie are usually in order, especially if there is to be a jury. *Your personal appearance and conduct are very important.*

Have a visit with your abstractor. (You have probably visited him before the survey was performed.)

Compile the documentary evidence you will take to court. Have all copies of plats clean and legible. Enlarge copies of plats and drawings so judge and jury can read the details easily. Write out the GLO calls on the plat. Insure that all the surveying standards are followed in preparing the plat. You will want to show the judge and jury that the survey meets these standards.

Consult textbooks, mark pages. Be able to refer to the reference books used, with familiarity—know the name of the author and his status as an expert in his particular field. You might xerox certain paragraphs or pages out of the books for circulation to the judge and jury.

Review the survey records in the clerk's office in the county where the property is located, so you will be able to describe the research procedure and the records available in that county.

Make copies of all surveys used in performing the survey. Have a sufficient number of copies for everyone concerned. Keep in mind that when you used Short-Cut Charlie's corner, you accepted responsibility for it being in the correct position just as if you had set it yourself.

Compile your documentary evidence in an orderly manner—

arrange the data so that you can just reach for what you want when you need it, and will not appear flustered, confused or disorganized when trying to find something during testimony.

Go to the field and review the field work, especially if it has been a period of time since the work was done. Make sure you have *current* knowledge of the situation. Talk to the party chief, field crew, and draftsman—everyone concerned with the survey. *Get your act together before going to court!* Have them prepare to accompany you to court. You might have a practice session in your office, explaining the procedure used on the survey, especially if you are inexperienced in speaking in public or under pressure.

Take photographs of roads, fences, timber, or corners—or whatever is applicable to the case—have photographs enlarged so they can be easily seen by everyone concerned. It may be necessary to cut a cross-section out of a tree and have an expert examine it to determine the age or kind of tree.

Make arrangements for your fee ahead of time. Don't make the fee contingent upon the outcome of the case. Include your time, expenses, and travel. If you have to give a deposition, charge for this service. Explain to the client what services are included in your fee.

If a subpoena is issued to avoid a fee, see the judge and explain the facts. Most judges will tell you not to come under these circumstances. If he insists, get your attorney to discuss this with the judge on your behalf.

You're in the Courtroom

You will be asked by the attorney to explain your qualifications. Give your education, experience, your licenses (have your cards in your wallet), and continuing education. (No doubt you have kept copies of presentations on various aspects of surveying from short courses and have them properly filed at your office for reference at times like this.) If there is a jury, go to great length to describe your qualifications—it might be wise to explain the curriculum of certain courses to show

the jury you have had education in a particular area.

Let the attorney guide you in your testimony. Listen to all the questions—the attorney may have changed the form of the question since your pre-trial conference.

Be sure you understand the questions. Be calm, deliberate, and methodical in answering questions. Be low-key—don't talk too loudly. Don't volunteer more than the questions ask for, even if there is something adverse on your survey. Don't ramble. Don't get angry. Don't talk back to the attorney. If there is a questionable situation, don't be *too positive*—there may be varying opinions.

You may be asked these questions:

Did you discuss this case before coming to court? (Certainly you did, with the client and his attorney.)

How much were you paid to come today? (Answer, telling the amount.)

Have you talked to your own attorney? (Yes, you did—or should have.)

Have you talked to the other attorney? (Answer, explaining why.)

The other attorney will try to take you out of your professional role.

Don't get any more technical than necessary. Use common, ordinary language as much as possible. Remember that the members of the jury probably do not understand much about surveying.

Don't be afraid to say, "I don't know." Don't rely on *heresay*—bring the oldtimer to court with you if he is able to come, so he can explain the situation for himself.

Do not let the other attorney set the pace. You are a professional man—if you break, you are in trouble. Stay cool. Answer to the judge, but do not confuse him. If your attorney objects, this is a signal—think hard. Ask to have the question repeated—this buys time.

Be specific in describing the procedure used. Have large copy on chalkboard. Use pointer to explain procedure, going from A to B, B to C, in a very systematic, orderly manner.

Bring your pocket calculator to court with you—make sure it is properly charged so it can be used without connecting to electric current.

Listen to the whole proceedings, if allowed. Keep your mind on what is

(continued on page 8)

Articles (continued)

going on. You may be subject to recall.

Do not discuss anything with jurors during proceedings of the case. This may cause a mistrial.

If opposing attorney comes to you during recess, do not discuss any part of the case. Refuse, saying you will get your attorney and talk to both at the same time.

Stay with client and attorney at the counsel table if the survey is an integral part of the case. Make notes on what to suggest to the attorney to ask the other surveyor.

It is distracting for a client to talk to his attorney. Don't distract the attorney, but you can talk to him. You may have to ask for a recess for a few minutes.

Bring the party chief, field crew, and draftsman—everyone concerned.

Your main role is as expert witness—you may become an expert advocate instead, defending your survey against another survey. When you become an advocate, you lose your credibility as a professional witness.

The Case is Over!

Review your testimony with the attorney and client. Make notes for future reference for a more effective procedure next time. Obtain a copy of the final document on the case for your files.

Remember that any survey you perform is not complete unless you can defend it in court. The one you short-changed—the one about which you are called upon to testify in court—can be very embarrassing

and damaging professionally.

Quintelle Cole is an affiliated member of the Association, and wife of Yellville surveyor Marvin Cole.

Reprinted with permission from HI's & PI's, April 1983, Arkansas Association of Land Surveyors.

LIABILITY

Certifications by licensee Surveyors are often requested or required to sign certifications relating to their professional services. Some of these certification forms are consistent with the performance of professional services. However, many of these forms result in substantial additional liability exposure for the surveyor and involve guarantees which may result in liability exposure which are specifically excluded by professional liability policies.

In performing services, the law imposes a standard of ordinary care on surveyors as measured against the conduct of other professionals in the community. This standard is not absolute and does not connote or imply perfection or a guarantee of performance. Unfortunately, surveyors often alter this legal standard by signing certification forms containing express terms to the contrary.

As a general rule, the surveyor can appropriately sign those certification statements (provided they are accurate and contain appropriate qualifying language) which relate to conditions within his knowledge or control. Conversely, it normally is ill-advised and inappropriate to sign any certificate which is, in effect, an unqualified attestation about things beyond the sur-

veyor's control.

All professional liability insurance policies exclude claims arising from express warranties or guarantees made by the insured. The following exclusion in the CNA/Insurance Surveyors' Professional Liability Policy is typical professional liability policies:

This insurance shall not apply to claims and claims expenses arising out of express warranties or guarantees.

In evaluating the language of a particular certification form to see if it falls within the scope of this exclusion, the surveyor must remember that the language need not include the word "warranty" or "guarantee" to fall within the realm of an "express warranty" or "guarantee" and thus pose a coverage problem. In fact, the most common used term is "certify".

The surveyor must ask himself two questions before signing any certification form:

- 1) Am I being asked to state as an unequivocal fact a representation that I believe to be true based upon my observations but which I cannot be absolutely sure is fact?
- 2) Am I being asked to make a representation which was beyond the scope of the professional service that I originally contracted to provide?

Example: I certify that this survey is free from defects and errors.

This is a clear example of language which is an express warranty or guarantee. The surveyor has changed the standard against which his performance will be judged from the negligence standard discussed earlier to a standard of "perfection". In this case, the potential plaintiff need not prove that the surveyor was negligent to collect damages. He only has to show that there was a "defect" in the survey. The surveyor's professional liability policy would still respond to a claim alleging negligence, but it would not respond to a claim arising out of the surveyor's "express warranty" that his survey was "perfect".

If the preceding certification were revised to read as follows; it could not be construed to be an "express warranty or guarantee".

Revised Example: I certify, to the best of knowledge, information, and belief, that this survey has been accurately prepared.

We strongly suggest that appro-

(continued on page 24)

Bathey

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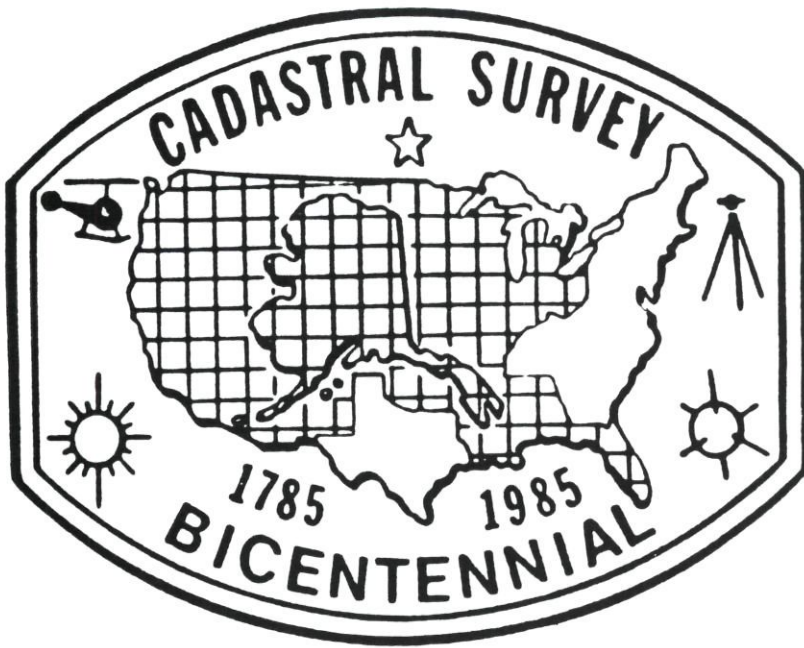
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Of Interest



As we all know, the Bi-Centennial Year for the celebration of the creation of the U.S. Rectangular Survey System is upon us.

To commemorate that event, a group of cadastral surveyors is

privately producing a handsome commemorative belt buckle. It is our feeling that this project will have the wide appeal to surveyors everywhere.

Our society has no financial in-

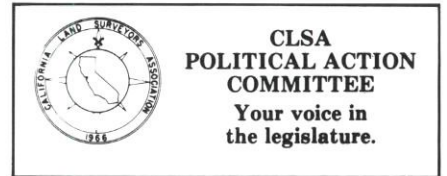
terest in this venture but we do consider it a very worthy effort and worth supporting.

The buckles will be cast of solid pewter, serially numbered in a strictly limited edition and will be available for the very modest price of \$10 (postpaid).

Since a single production run is planned, it is important that a reasonable count of those interested be made as soon as possible.

Interested persons should send their \$10 check by August 31, 1985, to: Jerry Pittman, 11486 West Florida Place, Lakewood, CO 80226, Home: (303) 988-6874, Office: (303) 236-0182

The Professional Land Surveyors of Colorado, Inc. thank you for your interest in and support of this subject.



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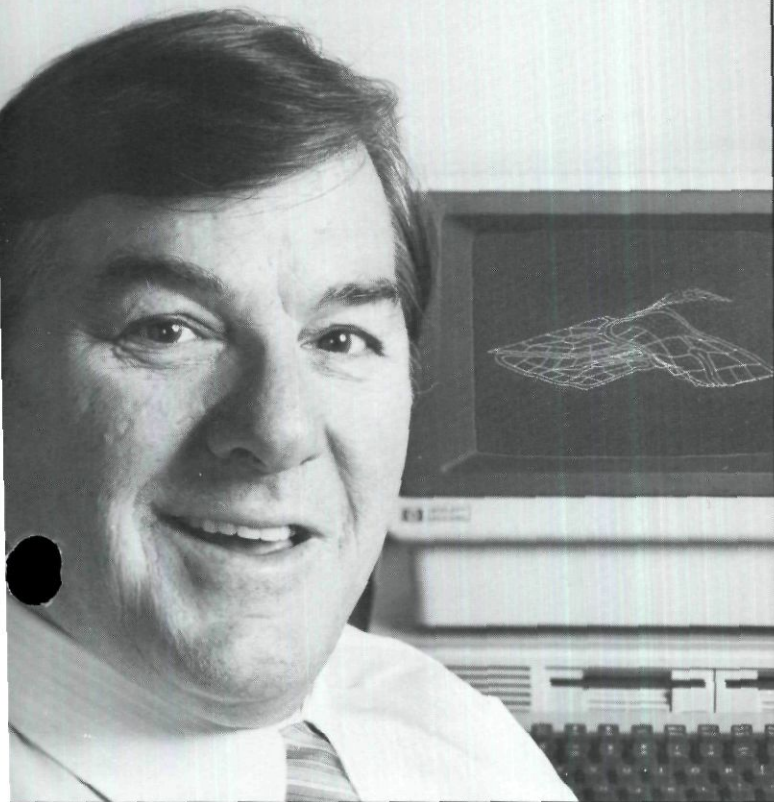
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Consulting Engineer Magazine Supports Procurement Study

"Consulting Engineer," a major national engineering trade magazine, published an editorial in its October edition strongly supporting the Office of Federal Procurement Policy (OFPP) study of professional services which Congress mandated in the Competition In Contracting Act. "Consulting Engineer" noted that since passage of the Brooks Act of 1972, the General Accounting Office "has persisted in ruling that some traditional A/E services, such as . . . surveying and mapping, can be procured through price competition rather than competitive negotiation at the option of the procurement officer." While recognizing that reopening the Brooks Act would be a "dangerous procedure," the editorial notes that "after 12 years of dealing with bidding requests on a case by case basis, it appears that those services that fell through the crack (of the Brooks Act) may finally be put on a par with design services."

Reagan Vetoes NOAA Authorization, Cites A-76 Limit As Reason

As predicted in the February issue of *Field Notes*, President Reagan on October 19 vetoed a bill providing authorization for National Oceanic and Atmospheric Administration programs for fiscal year 1985, citing a Congressional limitation on Office of Management and Budget Circular A-76 studies as an objectionable feature. In a message withholding approval of the bill, the President said the anti-contracting out provision would result in "excessive and unjustifiable delays" in agency contracting activities. He also noted the bill's provisions would "unduly effect the ability of the Department of Commerce to manage its programs responsibly and effectively." Mr. Reagan called the bill "an unwarranted intrusion by Congress into matters normally and properly within the management discretion of the Executive branch" and said the veto is "in the interest of efficient and economical conduct of government activities." The A-76 provision would have prohibited

NOAA from issuing any Request for Proposals to contract with the private sector for functions provided by government employees until Congress is given 30 days in which the House or Senate are in session to review the contracting out proposal. In a letter to ACSM, Associate NOAA Administrator James W. Winchester quickly noted that "while this action might appear to clear the way for NOAA to move ahead with this process without appropriate consultation, I want to assure you that this will not be the case. . . We will continue our emphasis on frequent contact and consultation with user communities as NOAA's A-76 process proceeds."

OMB Redirects A-76, Surveying and Mapping Still to be Studied

The Office of Management and Budget has announced a redirection of its Circular A-76. OMB has emphasized that the circular is to be used as part of a government "productivity enhancement program," not a blank check for massive contracting out as some had previously alleged it to be. The new directive instructs agencies to not only compare their cost of providing services against the private sector, but also obtain a bid for "the service under study from another government agency" currently providing these services. The most economical of the three options (keeping the service in the agency, contract out to the private sector, or contract with another government agency) will be selected." The productivity review will focus on 14 major functional categories. The list includes "architecture and civil engineering" which is defined as "activities involved in the planning, designing, constructing, modification, restoration and maintenance of structures and facilities. Includes the investigating, measuring, surveying and mapping of the earth's physical features and phenomena."

Budget Rug May Be Pulled From Lone Landsat Negotiator

Published reports indicate that negotiations between the U.S. Commerce Department's Source Evaluation Board and the sole private sector Landsat bidder are at an impasse due to the Office of Manage-

ment and Budget's unwillingness to provide the funds needed to assist the firm in establishing a viable commercial Landsat operation. The remaining bidder is the Earth Observation Satellite Corp. (EOSAT), a joint venture of RCA, Hughes Aircraft and several subcontractors. The original request for proposals and the Landsat Commercialization Act passed by Congress earlier this year authorize \$75 million for fiscal year 1985 to provide a subsidy or other financial aid to the successful bidder. It is reported that Office of Management and Budget Director David Stockman blocked Congress from specifically appropriating the funds before adjournment and is now opposed to any internal reprogramming of start up funds by the Commerce Department. If a contract cannot be successfully negotiated, the law requires Commerce to reauthorize a Request for Proposals. The Reagan Administration has already indicated it will not fund future government financed civil land remote sensing satellites, so the future of America's leadership in the field hinges on the contract negotiations. Individual ACSM ASP members and firms are asked to write their Congressman and Senators (particularly Republicans) and urge them to contact Commerce Secretary Malcolm Baldrige and OMB Director Stockman in support of full funding for Landsat commercialization that the Administration committed to when the sale process began.

Interior Releases Draft Surveyors/Surface Mining Act Regulations

The Office of Surface Mining has released for public comment draft regulations implementing Senator Robert C. Byrd's (D-WV) amendment reinstating the land surveyor as lead professional in the Surface Mining Control and Reclamation Act. The deadline for comments was extended to December 3. An initial review by several key ACSM members with mine surveying experience show the draft rules would permit surveyors to prepare and certify nearly every aspect of work under the Surface Mining Act which they are authorized to perform under state law. □

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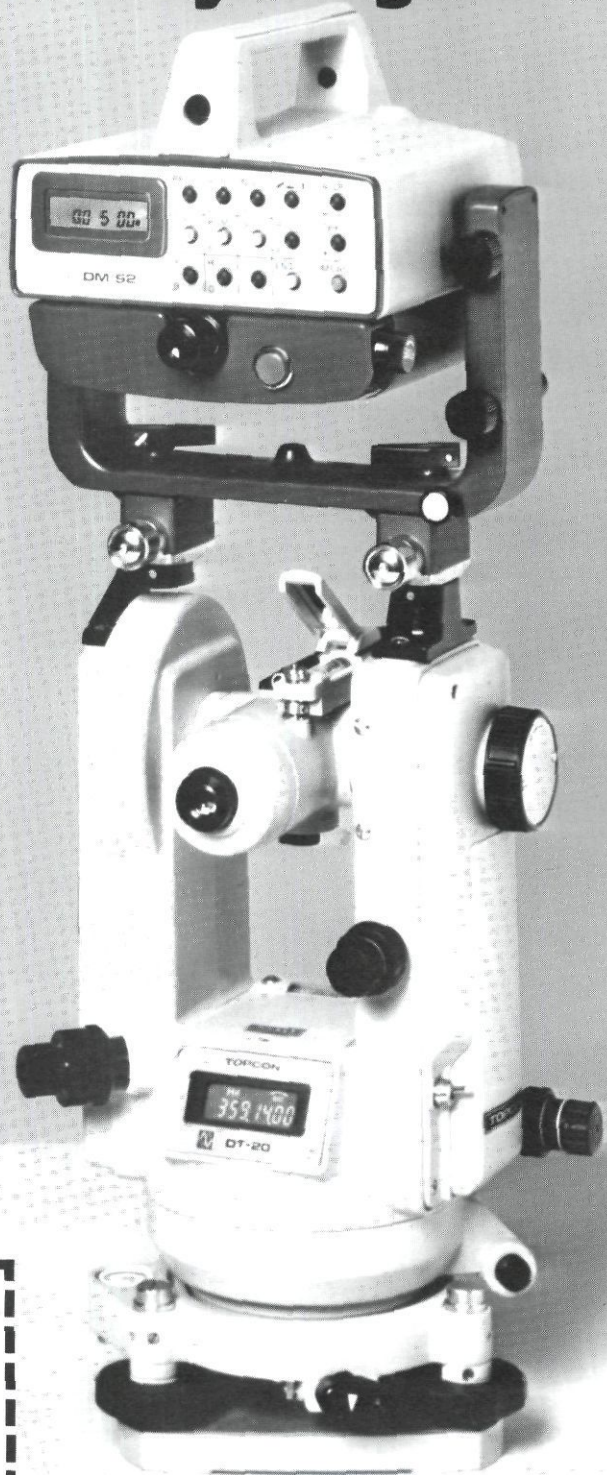
The DM-S2 reaches out to 1.4 km with just a single prism, 2 km with three and to 2.5 km with nine. The DM-S3 covers 2.4 km with one prism, 3.0 km with three and 3.6 km with nine.

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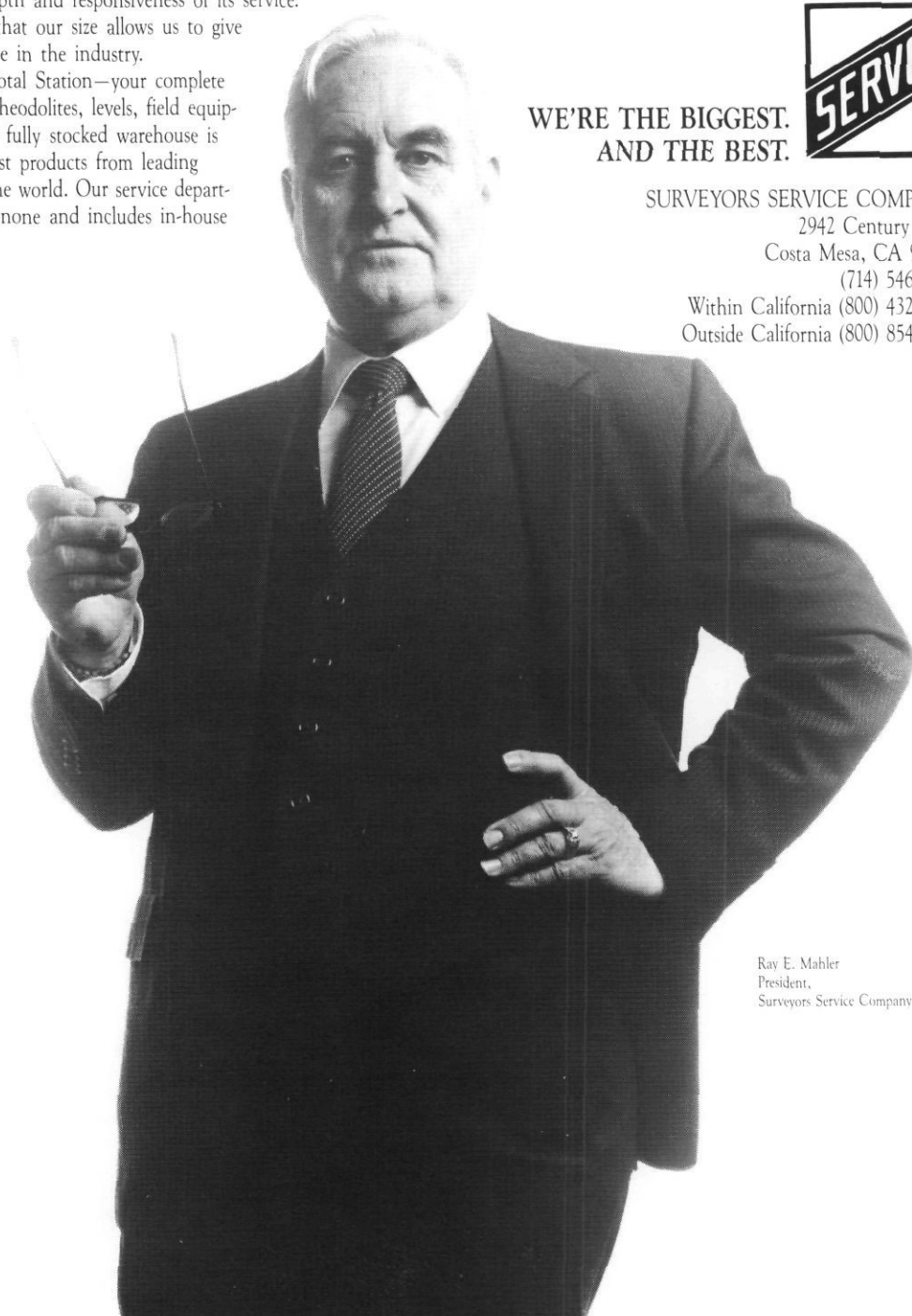
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1985 Conference

"Our Western Heritage"
May 22-27, 1985, San Diego, CA
by Michael J. Pallamary

This year's conference will be held at the Town & Country Hotel & Convention Center located in Sunny San Diego. The convention will be a memorable event as we celebrate the 200th anniversary of the rectangular survey system.

Since 1785, the surveys of the public lands have been conducted. The first surveys, beginning in Ohio, were made under the Geographer of the United States. These sections or "lots" were one mile square numbered 1 to 36 commencing with No. 1 in the southeast corner of the township.

On May 18, 1796 an Act provided for the appointment of a Surveyor General. His duty was to survey the public lands located northwest of the Ohio River. Half of the township were to be subdivided into two-mile blocks, while the rule for numbering sections within the township was changed to the same system used today.

In 1831, the Commissioner of the General Land Office issued detailed instructions to the surveyors general concerning surveys and plats. Subsequent to these directions, the Manual of Surveying Instructions evolved.

The Act of July 4, 1836, placed the overall direction of the public land surveys under the principal clerk of surveys in the General Land Office. The first "manual" was printed in 1851 as Instructions to the Surveyor General of Oregon; Being a Manual for Field Operations." Immediately, its' use was extended to Minnesota, Kansas, Nebraska, New Mexico, and California. A slightly revised version of the instructions were issued in 1855.

Today, we still use this system to locate and relocate most of our land boundaries.

Our unique livelihood is to a certain degree dependant upon our ability to establish and reestablish these land boundaries.

Today in 1985, we find the system to still be effective.

It never ceases to amaze me when one finds an old section corner monument. Our heritage is rich with

history, both physical and recorded.

The conference theme, "Our Western Heritage" is our way of celebrating the expansion of the rectangular survey system to California. The 200 year old system and methods have gone through some noticeable changes. Obviously one of the most dramatic has been the use and advent of electronic distance meters and calculating devices.

This years conference will feature exhibits and distributor's displays of modern electronic equipment. As always, the program committee is striving to present the best possible guests and programs available today. In staying in with the theme, the Surveyor's Historical Society will have an exhibit on display. Incidentally, if anyone has some antique instruments and/or artifacts they would like to display, please feel free to contact the conference committee. We would welcome the opportunity to display your equipment.

Our social committee is working on some exciting programs. These include a trip to the World Famous San Diego Zoo, Mexico, Old Town, and a dinner while sailing through San Diego Harbor on the spacious "Sternwheeler Showboat". The dinner sail includes all cocktails/beverages, dinner, band, dancing and sales tax.

The conference will be held on Memorial Day weekend. As a result, the San Diego Chapter may host a few additional tours or events, depending upon how many decide to spend the long weekend here in San Diego. However long you intend to spend down here, from south in sunny San Diego, Welcome. We're looking forward to seeing you in May!

This year's committee members include: Mike Welch (Chairman & co-chairman; Exhibits); Dorothy Calegari (pre-Registration & Finances); Howard Dye (Hotel Contact); Frank Fitzpatrick (Co-Chairman Exhibits); Dennis Landberg (Host-coordination); Chuck Moore (Program); Nathan Willess (Student Coordinations); Ronald Parker (Social Program); Michael Pallamary (Publicity) □

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Minutes from Meeting

HIGHLIGHTS FROM THE MINUTES OF THE CLSA BOARD OF DIRECTORS MEETING held at the Sheraton Plaza LaReina Hotel, 6101 West Century Blvd., Los Angeles, CA, on October 20, 1984.

by *Richard P. Siegmund, L.S. Secretary*

Purchase of a computer for CLSA Central Office. **MOVED** and **SECONDED** to direct the Executive Director to proceed with the purchase of a computer for the Association and necessary funds be appropriated. **MOTION CARRIED.**

MOVED and **SECONDED** to establish the Private Practice Committee as an ad Hoc Committee to conduct an investigation and prepare a written report on the agenda for the January Board of Directors meeting on how the Association may be more responsive to 80% of the membership in private practice—look at the needs and make recommendations. **MOTION CARRIED.**

MOVED and **SECONDED** to adopt a policy that all committees and all committee chairmen positions automatically terminate at the

close of the administration at the discretion of the new President—exception would be the nominating committee and the Conference Committee—**MOTION CARRIED.**

MOVED and **SECONDED** that the Board adopt a policy of items #1 and #2 in the Nominating Committee Report:

- 1) Set definite written goals and strategies for accomplishment and set conceptual goals and strategies for the next 5 years as a foresight
- 2) Restructure (redefine) the authorities, responsibilities and duties of each officer of the Board of Directors. **MOTION CARRIED.**

WORKSHOP COMMITTEE REPORT: Gene Rutledge reported that he has contacted the University of California, Berkeley (ITS) with regard to their developing a series of workshops for the Association. ITS would develop the seminars, carry the expenditures and receive the income. The workshop would be scheduled on the Fridays prior to the Board of Directors meetings to allow attendees to attend Board meetings. The objective of the program would be to provide education

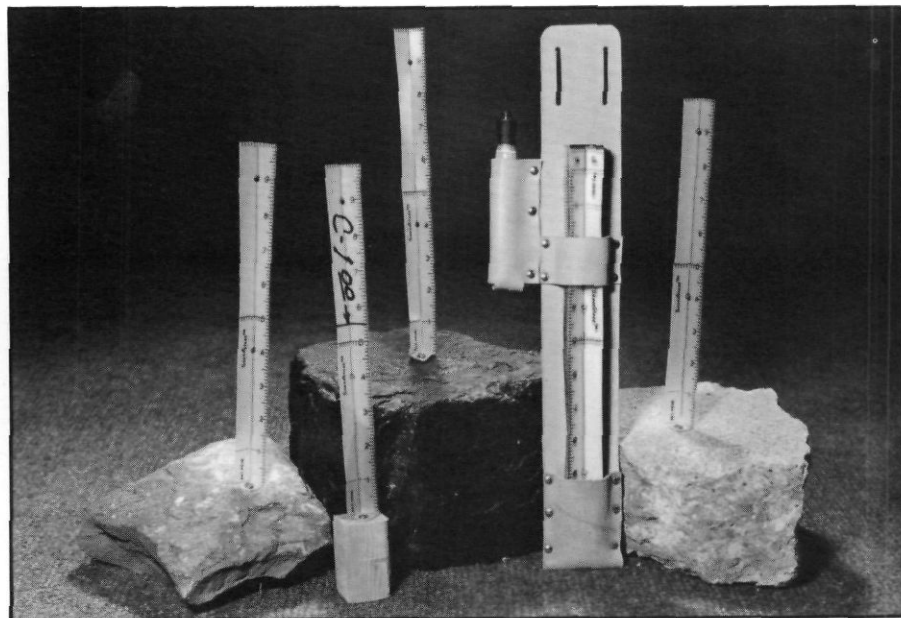
for the membership and not for the purpose of raising funds for the Association. CLSA would assume full responsibility for preparing and distributing text material and would receive funds for the sale over and above the actual costs. Profits from the sale of text material would be shared with the local chapters of CLSA. **MOVED** and **SECONDED** that the State Association accept the University's offer to provide workshops as presented. **MOTION CARRIED.**

MOVED and **SECONDED** that the President be authorized to execute the contract with Winner/Wagner for 1985 for legislative services. **MOTION CARRIED.**

PROPRIETOR'S COUNCIL: **MOVED** and **SECONDED** that the Proprietors Council be disband and thank them for their efforts and encourage them to participate with the State Association Committee toward achieving their same goals. **MOTION CARRIED.**

PROFESSIONAL LIAISON: Lou Hall reported that CLSA has been invited by the California Council of Civil Engineers and Land Sur-

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veyors (CCCE&LS), pursuant to our request, to send an observer to the next meeting of the County Engineers Association meeting.

It was reported that CCCE&LS has also requested CLSA's endorsement as an Associate member to the Western Federation of Professional Land Surveyors. **MOVED and SECONDED** that CLSA send a letter requesting membership in the County Engineers Association and that CLSA has voted to sponsor CCCE&LS as an Associate Member to the W.F.P.L.S. **MOTION CARRIED UNANIMOUSLY.**

President Dorsey appointed Lou Hall as CLSA's observer to the County Engineers Association meeting.

LIAISON WITH THE STATE BOARD OF REGISTRATION: Vince Sincek reported on the improved activities at the State Board of Registration including the revised informational newsletter, review of applicants for the LS exam, formation of a Technical Advisory Committee of Land Surveyors, improved investigations and enforcement, publication of the LS, CE and

Board Rules. The LS examination now reflects the practice of land surveying. □

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The California Surveyor is requesting cover photos from its readership. Photos should be 8"x10" glossy-for-repro. Information regarding the subject of the photo plus the photographer/contributor should be sent to the Editor along with the photo and a letter giving The California Surveyor permission to publish the material.

From The Editor

The article "When the Boss Gets a Computer" which appeared in the Fall 1984 issue of The California Surveyor, was reprinted from the Personal Computing, March 1984, Copyright 1984, Hayden Publishing Company, with their permission. *The Editor apologizes for this omission.*

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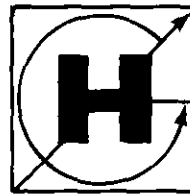
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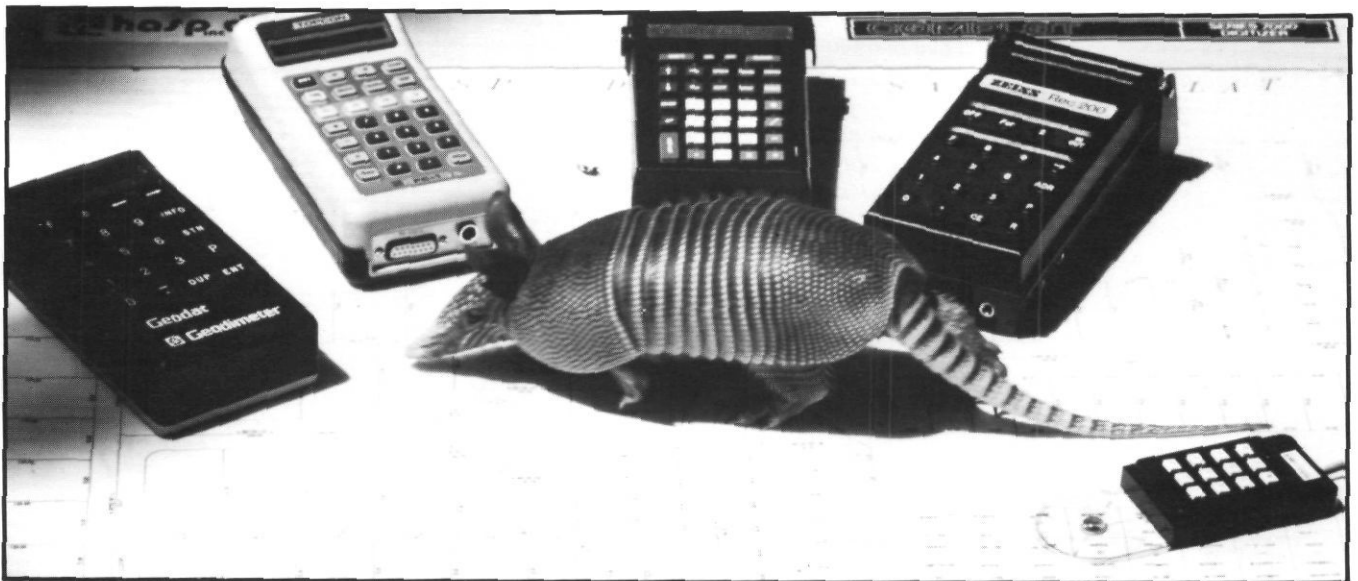
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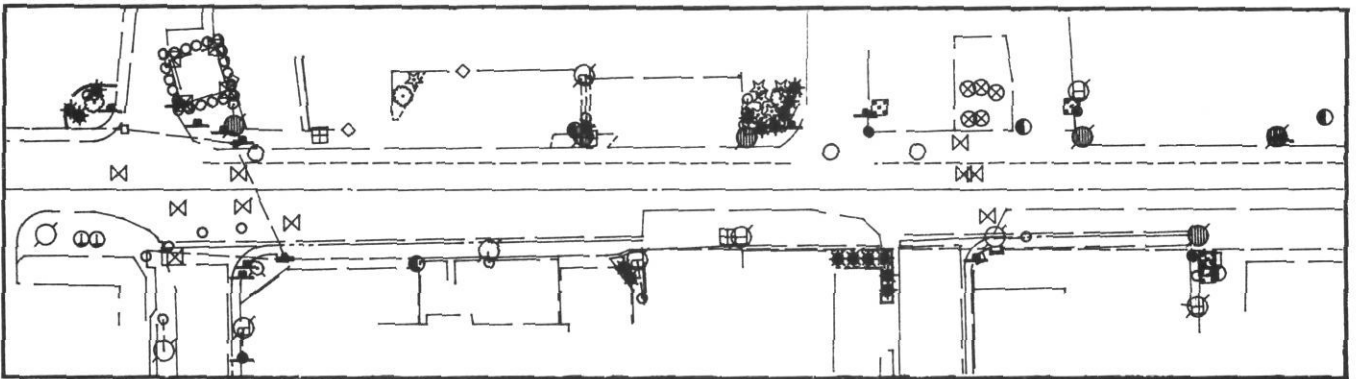
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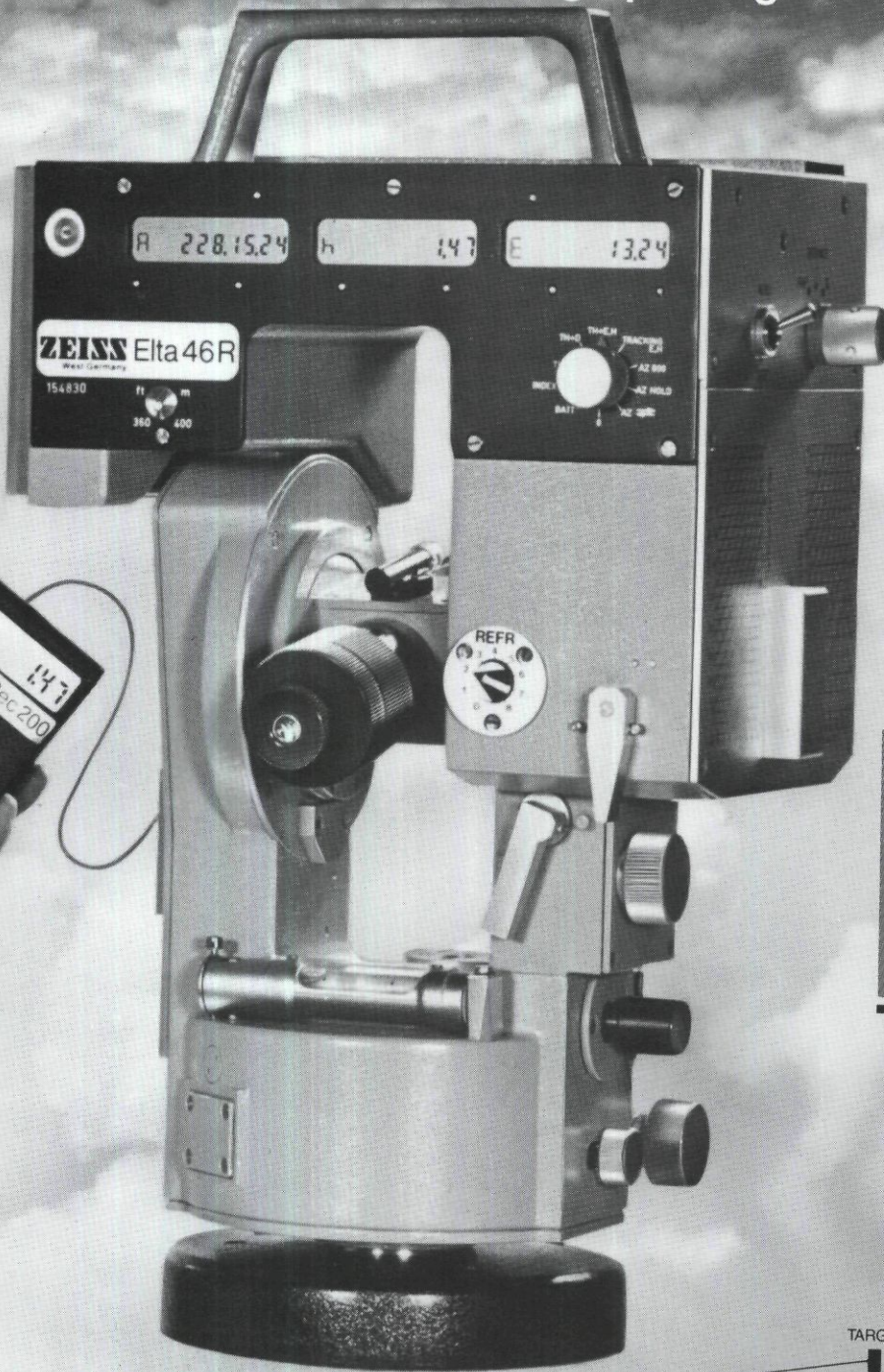
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Articles (continued)

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Note: This information is designed as an alert to the professional surveyor. It is not meant to be a substitute for advice that the surveyor should seek from competent insurance or legal counsel.

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HISTORY OF THE LAND SURVEYORS' ACT

by Louis E. Rutledge

The Land Surveyors' Act and the Subdivision Map Act have been closely associated since their beginning in the early 1890's. It is almost impossible for the layman to discern the difference between the two. Because of their closeness, a history of the Land Surveyors' Act and the Subdivision Map Act must be dis-

cussed together to acquire a more complete understanding of each.

In December 1981, Mr. Andrew B. Gustafson of the County Counsel's Office, County of Ventura, was asked for and rendered an opinion concerning the creation of lots by record of survey. It is the question posed to Mr. Gustafson, his answer and analysis that I have chosen to use to present this brief history of the Land Surveyors' Act.

Question: In what circumstance does or did the "record of survey" prepared and recorded pursuant to the Land Surveyors' Act or its predecessor acts, "create" parcels within the meaning of Government Code Section 66424.2(a) or create an "established" subdivision within the meaning of Government Code Section 66499.30(d)?

Answer: A "record of survey"
(continued on page 29)

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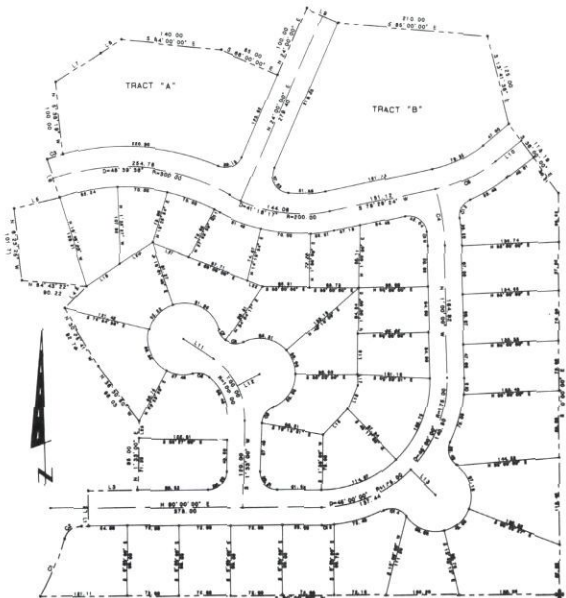
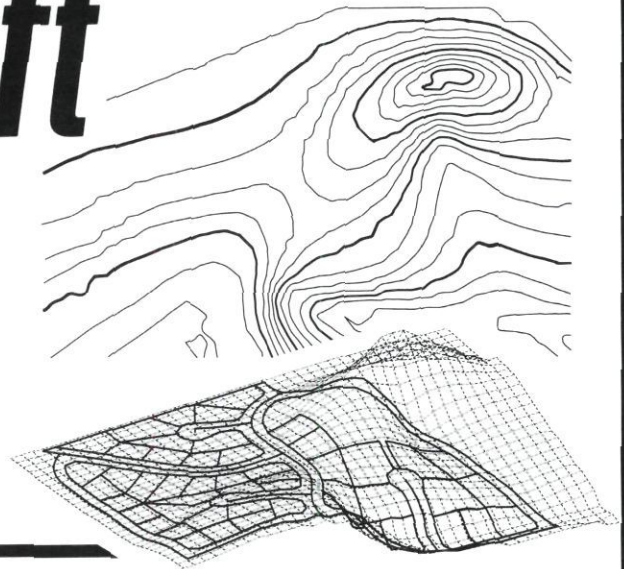
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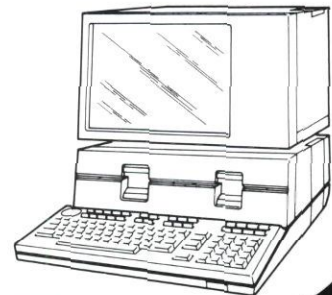
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(continued from page 20)

prepared and recorded pursuant solely to the Land Surveyors' act or its predecessor acts does not and never did "create" parcels or an "established" subdivision within the meaning of Government Code Sections 66424.2(a) and 66499.30(d). However, a "record of survey" prepared and recorded pursuant to the Subdivision Map Act, its predecessor acts, or local subdivision

ordinances did "create" parcels and "establish" subdivisions within the meaning of these sections.

A record of survey prepared and recorded pursuant to the Subdivision Map Act, its predecessor acts, and local subdivision ordinances can be distinguished from one prepared and recorded pursuant solely to the Land Surveyors' Act either by the certificates and endorsements which appear on the face of

the record of survey or by reference to other public documents prepared in conjunction therewith.

Analysis: Section 66424.2(a) as used in Mr. Gustafson's analysis dealt with the merger and subsequent demerger question of contiguous parcels of land under a single ownership. This entire section of the Map Act was repealed by Chapter 845, Statutes of 1983.

(continued on page 30)

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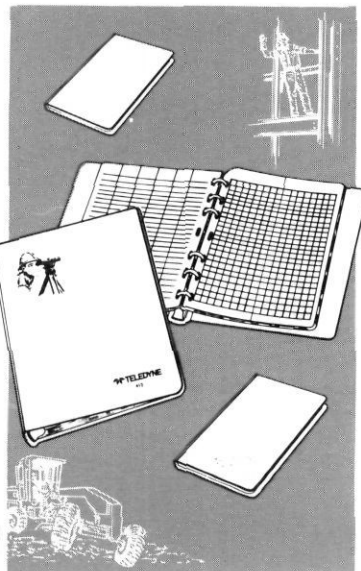
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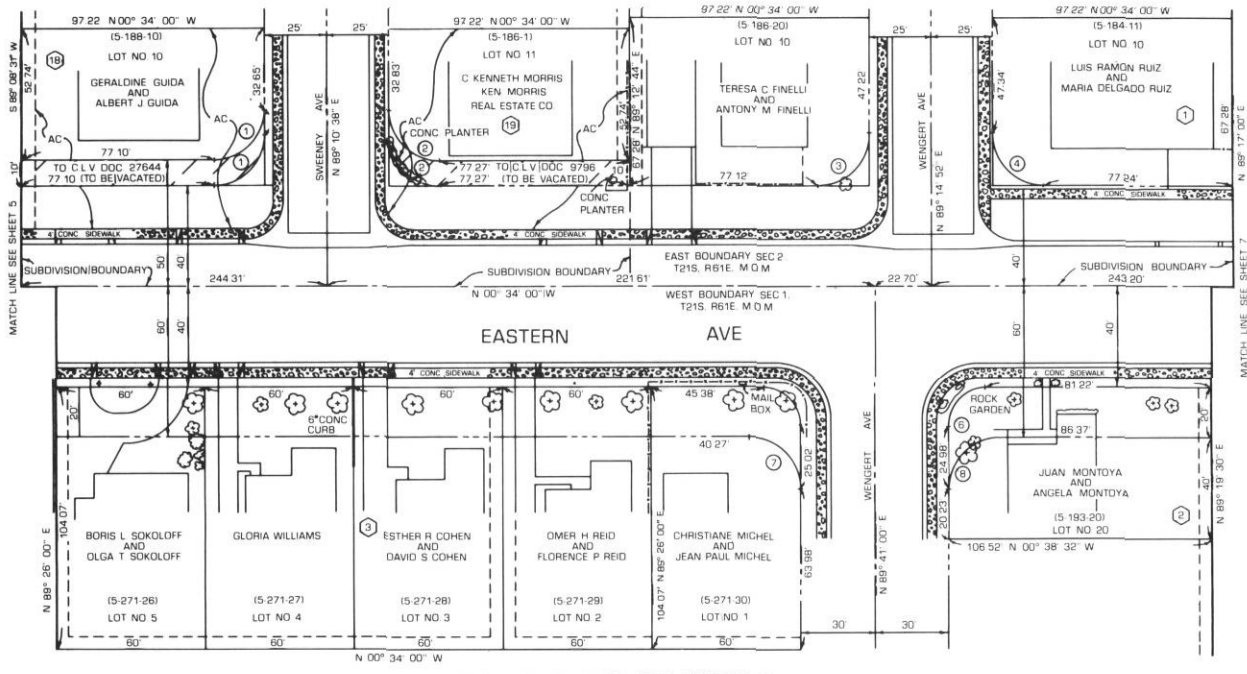
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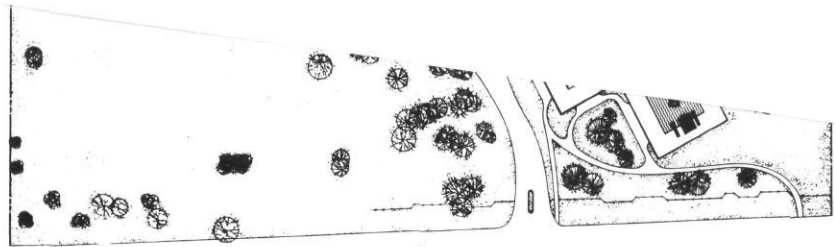
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Articles (continued)

Section 66499.30 prohibited the sale, etc., of certain parcels until certain maps required by the Subdivision Map Act and local ordinances are filed.

It was these two sections of the Subdivision Map Act that led to the question and subsequent answer. A review of the histories of the Subdivision Map Act and the Land Surveyor's Act leads to the conclusion that the only "prior law" regulating the creation of legal lots is set forth in the earlier versions of the Subdivision Map Act itself. The Land Surveyors' Act has never regulated the creation of legal lots, and record of survey maps prepared and filed pursuant solely to that act are not the functional equivalent of a final or parcel map.

Land Surveyor's Act

The Land Surveyor's Act had its genesis in 1891 with the enactment of Chapter 255 of the 1891 Statutes. That seminal act was entitled "an act to define the duties of and to license land surveyors." It provided for the examination and licensing of surveyors and, at Section 11, further provided:

"Within sixty days after a survey relating to the sale or subdivision of lands, the retracing or establishing of property and boundary lines (etc.) . . . has been made by a licensed surveyor, he shall file with the Recorder of the county . . . a record of survey. . ."

The entire thrust of the Act was to ensure the competence of surveyors, the accuracy of surveys, and the integrity of records of surveys. The Act did not require a survey as a condition precedent to a sale or subdivision of land. It merely stated that, if a survey were made relating to a sale or subdivision, a record of the survey should be recorded. The sale or subdivision of land was not restricted or regulated in any way.

Since 1891, the Land Surveyors' Act has undergone many amendments. For example: Stats. 1907, Ch. 247; Stats. 1931, Ch. 1091; Stats. 1933, Ch. 506; and Stats. 1939, Ch. 41. The last of these codified the Land Surveyors' Act in the Business and Professions Code, commencing with Section 8700. More recent amendments are listed in the annotated version of that Code. Its main thrust has remained unchanged.

At no time has the Land Surveyors' Act purported to regulate sales of land or the design and improvement of subdivisions. In fact, since 1933 the Land Surveyors' act has provided that, if the county surveyor and the licensed surveyor are unable to agree upon whether the record of survey is satisfactory, the county recorder must nonetheless accept the record of survey for filing once an explanation of the disagreement is noted on the map. The Attorney General opined that this provision, when read in conjunction with other provisions enacted in 1943 but since repealed, meant that a record of survey could be recorded pursuant to the Land Surveyors' Act even though it depicted lines which did not represent existing boundary or property lines. 18 Ops. Cal. Atty. Gen. 110 (1951). It does not follow, however, that the recording of such a record of survey would create new legal lots. If that were the case, the regulatory process exercised by local agencies pursuant to the Subdivision Map Act and local subdivision ordinances could have been frustrated simply by recording a record of survey. This, of course, is not the case.

(continued on page 33)



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Education News

"Land Surveying Education Being Re-Established in California Universities"

The California Foundation for Land Surveying Education, has made progress in the past year, toward the re-establishment of land surveying education in California universities.

The initial effort was to work with California State University at Pomona, to get a "Survey Option" to the Civil Engineering program and ultimately establish a baccalaureate in surveying. Indication has been given that approval of the "Survey Option" at Cal Poly, Pomona is very likely to receive approval, and be in place, by the Fall Quarter of 1985! An outline of the proposed course is as follows:

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CE 222 Highway Engineering Design ..	2
CE *311 Geodetic Surveying	3
CE *313 Land Survey Descriptions	4
CE *322 Boundary Control & Legal Principles	4
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CE 451 Engineering Hydrology	4
CE *482 Subdivision Engineering ...	4
Upper Division CE Restricted Electives	5
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	41

*new courses

To date, two courses, "Land Survey Descriptions" and "Boundary Control and Legal Principles" have been prepared by the Foundation, and well attended through the continuing education division of Cal Poly. A third course, "Public Lands" is currently in progress with 40 students in attendance. Succeeding courses will be "Geodetic Surveying", and

"Satellite Surveying" (upper division CE restricted electives).

The Foundation's purpose, has been to address the unavailability of adequate land surveying education throughout California. Assuming success at Cal Poly, the Foundation is anxious to approach a Northern California university. To do so, two items require attention: the assistance of volunteers interested in furthering this worthwhile cause, and the raising of funds. Please join with your professional and financial support in a cause designed to: Upgrade the quality of land surveying education, provide highly qualified land surveying graduates for hire, and enhance the image and professional status of the land surveyor.

The support given by the CLSA and the CCCE and LS has been the basis upon which the Foundation has been able to progress to date. Your added support will ensure success in achieving the ultimate goal.

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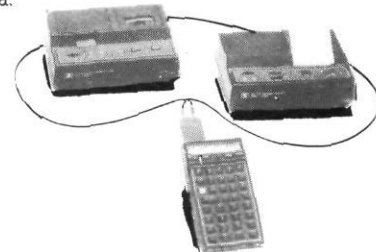


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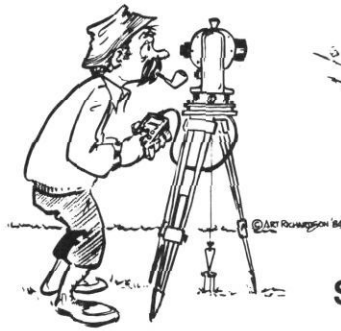
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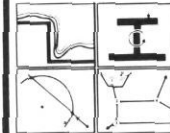
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Articles (continued)

There was a period of time during which a record of survey might be recorded pursuant to the Land Surveyors' Act even though the lots depicted thereon were not legal lots. In apparent recognition of the fact that persons unsophisticated in the law might be misled by such records of surveys, the Legislature has since amended the Land Surveyors' Act so as to prevent the recordation of any records of survey depicting new lots unless the county surveyor certifies on the record of survey that the new lots were created in compliance with the Subdivision Map Act and local subdivision ordinances.

The Subdivision Map Act

The Subdivision Map Act had its genesis in 1893 with the enactment of Stats. 1893, Chapter 80. It was entitled:

"An Act requiring the recording of maps of cities, towns, additions to cities or towns, or subdivisions of lands into small lots or tracts for the purposes of sale, and providing a penalty for the selling or offering for sale any lots or tracts in cities, towns, additions to cities, towns,

subdivisions, or additions thereto, before such maps are filed and recorded."

Section 1 of the act provided:

"Whenever any... subdivision of land into lots, or any addition to... such subdivision, shall be laid out into lots for the purposes of sale, the proprietor or proprietors thereof shall cause to be made out an accurate map or plot thereof, particularly setting forth and describing:

"First—All the parcels of ground within such... addition, or subdivision, reserved for public purposes...; and,

"Second—All lots intended for sale, either by number or letter, and their precise length and width."

Section 2 required that the map be acknowledged by the owner before a public officer. Section 3 required that the map, as acknowledged by the owner and certified by the official, be filed with the county recorder. Section 4 provided:

"Every person who sells, or offers for sale, any lot within any... subdivision, or addition, before the map or plat thereof is made out, acknowledged, filed, as herein provided, is guilty of a misdemeanor..."

This act, unlike the Land Sur-

veyors' Act, directly regulated the sale of lots. It is the first act requiring the filing of a map as the condition precedent to the sale of new lots depicted thereon. In other words, it regulated the creation of legal lots, and is one of the prior laws regulating the division of land. Maps prepared and filed pursuant to its provisions are the functional equivalent of final and parcel maps.

(continued on page 34)

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Articles (continued)

A map recorded pursuant to the 1893 act might very well be labeled "record of survey", but it would be distinguishable from a record of survey prepared and filed pursuant only to the Land Surveyors' Act. The former would have lots designated by number or letter, the latter would probably not.¹ The former would be acknowledged by the owner, the latter might not even show the owner's name.² The former would be certified by a public official respecting the owner's acknowledgment, the latter would not.

Section 3 of the 1893 act was amended by Stats. 1901, Chapter 124, to read:

"The map or plat so made, acknowledged, and certified shall be presented to the governing body having control of the streets... in the territory shown on the map or plat, and said governing body shall endorse thereon which streets... offered by said map or plat, they accept on behalf of the public, and thereupon such streets... only as have been thus accepted, shall be and become dedicated to public use. When so endorsed, and not before, said map or plat shall be recorded in the office of the county recorder..."

Hence, after 1901, the endorsement of the governing body became another mark which distinguishes maps filed pursuant to the subdivision statute from those filed pursuant to the Land Surveyors' Act. In addition, from 1901 (Stats. 1901, Ch. 124) until at least 1929 (Stats. 1929, Ch. 837, § 30) the Subdivision Map Act permitted maps as large as 36 inches square, whereas from 1907 (Stats. 1907, Ch. 247, § 9) to the present (Bus. & Prof. Code § 8763) the Land Surveyors' Act has never permitted maps larger than 21 inches by 30 inches.

The 1893 act, as amended in 1901, was substantially reenacted by Stats. 1907, Chapter 231, with minor changes. Section 3 of the 1907 act required, in addition to the endorsements and acknowledgments required by the earlier versions, a certificate from the county auditor respecting tax liens. The prohibition against selling or offering to sell lots within a subdivision unless a subdivision map had been filed was modified by Section 8 of the 1907 act to apply only to sales or offers to sell "by reference to any map or plot." Hence, lots would

once again be created by conveyance, without filing a subdivision map, so long as the deed contained a metes and bounds description and did not refer to any map.

The Subdivision Map Act was greatly modified by Chapter 837 of the 1929 Statutes. Its application was generally limited to "subdivision" which was defined as the division of land into five or more lots. Design and improvements were expressly regulated for the first time. Before any sale of lots in a "subdivision" could occur, the subdivider had to submit a "tentative map". If the tentative map were approved, he could either prepare and record a "final map" or divide the property by executing deeds containing only metes and bounds descriptions. If the tentative map were not approved, he could not record any map pursuant to the Subdivision Map Act, but he could nonetheless divide the property by executing deeds containing metes and bounds descriptions. Because the 1929 Act coined the term "final map" to describe the only map which could be recorded pursuant to its provisions, it seems unlikely any such map would be labeled "record of survey", although that is not impossible. In any event, a map recorded pursuant to the 1929 Act, however labeled, can be readily distinguished from a record of survey recorded pursuant to the Land Surveyors' Act by the certificates and endorsements appearing thereon. These include, in addition to those required by the 1907 act, a certificate by the county surveyor respecting special assessments and a certificate by the county surveyor (or other officer or body designated in local regulations) of compliance with the tentative map and other requirements of the act. Similar certificates have been required for all "final maps" ever since.

In 1937, the Subdivision Map Act underwent another major revision. See Stats. 1937, Ch. 670. A tentative map was still the first step in a "subdivision." But before any sales within a "subdivision" could occur, the owner would have to record, at his option, either a "final map" or a "record or survey map." This was the first time the term "a record of survey" appeared in the Subdivision Map Act. The option to use such a "record of survey map" as an alternative to a final map was incorporated into Article 6 of the act in 1943 (see Stats. 1943, Ch. 128) and

remained in the Act until 1955 when it was deleted by Stats. 1955, Ch. 1593. Such record of survey maps are hereinafter called "Article 6 records of survey." As the Attorney General opined at 10 Ops.Cal.Atty.Gen. 7,8 (1947), the Article 6 records of survey were not the same as the records of survey referred to in the Land Surveyors' Act. Among the features that distinguish them is the requirement set forth in the Subdivision Map Act that the Article 6 record of survey map have a certificate by the clerk of the approving governing body stating that the map was approved for subdivision purposes in accordance with the conditional approval of the tentative map.³ Clearly, an Article 6 record of survey which was recorded pursuant to the Subdivision Map Act from 1937 to 1955 is the functional equivalent of a final map and would create legal lots in the same manner as a recorded final map.

The 1937 version of the Subdivision Map Act (Stats. 1937, Ch. 670), at section 2(g), also required the filing of a "record of survey map" with respect to certain land divisions into five or more lots which were exempted from the definition of "subdivision." When the Subdivision Map Act was codified in 1943 (Stats. 1943, Ch. 128), these requirements were set forth in somewhat modified form in Business and Professions Code Sections 11535(b) and (c). These records of survey, unlike Article 6 records of survey, were to be filed "pursuant only to the provisions of" the Land Surveyors' Act. However, the requirements of the Subdivision Map Act could be met only if, prior to such filing, the governing body had given certain approvals regarding lot design, access and, in some cases, drainage. In short, notwithstanding the statement that Section 11535 records of survey were to be filed pursuant only to the Land Surveyors' Act, their preparation and filing was mandated by the Subdivision Map Act. They are the functional equivalent of a parcel map, and logic dictates that they too should create legal lots upon recordation.

See 43 Ops.Cal.Atty.Gen 144, 146 (1964) (stating that Section 11535 records of survey "probably" create legal lots). The problem is that, because they were filed pursuant to the Land Surveyors' Act, they may not be distinguishable on their face from ordinary records of survey prepared and filed solely pursuant to

that act. The fact that the lots depicted thereon were first approved by the governing body is what distinguishes Section 11535 records of survey from the ordinary kind, but this fact might not appear on the face of the recorded document. In such a case, it may be necessary to resort to extrinsic evidence on a case-by-case basis to determine whether the map created legal lots. Happily, the problem exists only with respect to records of survey depicting five or more lots which were filed from August 27, 1937, (the effective date of Stats. 1937, Ch. 670) to September 17, 1965. On the latter date, Business and Professions Code Section 11535 was amended so as to delete all reference to a "record of survey" and to require in lieu thereof a "parcel map."

(See Stats. 1965, Ch. 1180.) The 1965 amendment also authorized local agencies to enact ordinances requiring a "parcel map" for land divisions creating less than five lots.

The Subdivision Map Act as codified in 1943 (Stats. 1943, Ch. 128) was similar to the 1937 version. On September 7, 1955, (Stats. 1955, Ch. 1593) the provisions permitting Article 6 records of survey as an alternative to a final map were deleted so that all "subdivision" (i.e., division into five or more lots, with some exceptions) could be by "final map" only. In 1965 (Stats. 1965, Ch. 1180) the term "parcel maps" was introduced into the Subdivision Map Act, and the reference to Section 11535 "records of survey" was deleted. Among other things, the 1965 Act required that, when required by local ordinance, a parcel map must be filed for divisions of land into four or less lots. Parcel

maps were also required for certain divisions into five or more lots which did not fall within the definition of "subdivision" and for which Section 11535 records of survey had been required theretofore. All parcel maps were required to have a certification by the county surveyor that they were in compliance with the Subdivision Map Act, and this requirement has been retained in the law to date.

In summary, the Land Surveyors' Act does not, and never did, purport to regulate the sale of divided land and, moreover, is not, and never was, a "law regulating the division of land" or a "law regulating design and improvement of subdivisions". It follows that records of survey prepared and recorded pursuant only to the Land Surveyors' Act or its predecessor acts do not, and never did, create legal lots. □

¹The 1981 amendment to the Land Surveyors' Act expressly forbade lot numbers or letters unless the lot numbers or letters already appeared on another "map of record." 1931 Stats., Ch. 1091, § 3. This prohibition has been deleted in the 1935 amendment. 1935 Stats., Ch. 775, §§ 6-12. Lot numbers or letters are of obvious utility on a map which creates legal lots; they are likely to be superfluous on a map which does not.

²The Land Surveyors' Act required that the name of the landowner (as opposed to the name of the surveyor or the person for whom the survey was made) appear on the record of survey only for the period from August 21, 1933, (the effective date of Stats. 1933, Ch. 506, § 11(d)) to September 15, 1935, (the effective date of Stats. 1935, Ch. 775, § 11.5).

³This requirement appears at Section 15 of the 1937 Act and, from 1943 to 1955, at Business and Professions Code Section 11576. Note that, from 1945 to 1963, Section 8766.5 of the Business and Professions Code provided that an ordinary record of survey recorded pursuant to the Land Surveyors' Act and depicting more than four lots must contain a statement prepared by the surveyor, or the person for whom the survey was made, of facts showing that the record of survey was not of a "subdivision" as defined in the Subdivision Map Act, or else all the requirements of the Subdivision Map Act must be complied with. This statement of facts should not be confused with certification by the clerk of the approving government body that a map has been approved for subdivision purposes.

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