



White Paper

California Right of Entry

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Mission Statement

To promote the public’s perception of land surveying and to support all efforts by Professional Land Surveyors to elevate the stature of the profession. As an advisory organization, our purpose is to research, summarize, debate, and publish our findings on various topics relating to the principles and applications of the Professional Land Surveyors Act and the California Subdivision Map Act.

Adopted: June 12, 2009

Introduction

Professional land surveyors licensed in the State of California and Registered Civil Engineers licensed prior to 1982 and authorized to practice land surveying¹ and who are competent to perform surveys, have been provided a statutory Right of Entry upon private and public property to perform land survey work. An individual engaged in the lawful practice of land surveying as authorized by Section 846.5 of the California Civil Code (CCC) is thereby exempt from prosecution for trespass pursuant to Section 602.8 of the Penal Code of the State of California. The only stated exception (CCC846.5 (b)(c) & Business and Professions (B&P) Code 8774 (b)(c)) relates to access to segments of State controlled freeways. Although the authorized professional land surveyor may be prohibited from conducting a survey on a State Highway, the State of California Department of Transportation, commonly known as CALTRANS, is required to provide reference monuments outside the access control line in a reasonable time and at no charge when requested in writing by the authorized professional land surveyor. In order to initiate such a request, contact the Caltrans District Survey office in the district where your project is located, include the post mile limits of your requested work area and the side of the highway you are working on (i.e. Mrn-101-8.0/10.3 - easterly side of freeway) and to the best of your ability, identify the location of the reference points you need established. For further information on contacting the various district offices, contact CALTRANS at <http://www.dot.ca.gov/>. They have a very professional staff and they are very accommodating.

The following recitations are associated with the Right of Entry Laws related to the practice of land surveying in California. So as to place these various codes in perspective as well as to outline situations wherein they may be applicable, a brief commentary is provided following the recitation.

CCC §846.5.(a) The right of entry upon or to real property to investigate and utilize boundary evidence, and to perform surveys, is a right of persons legally authorized to practice land surveying and it shall be the responsibility of the owner or tenant who owns or controls property to provide reasonable access without undue delay. The right of entry is not contingent upon the provision of prior notice to the owner or tenant.

¹California Code of Regulations 415. Practice Within Area of Competence. A professional engineer or land surveyor licensed under the Code shall practice and perform engineering or land surveying work only in the field or fields in which he/she is by education and/or experience fully competent and proficient. Nothing in this regulation shall be construed: (1) to prohibit a professional engineer from signing plans which include engineering work in areas other than that in which he/she is fully competent and proficient, if such work was performed by other engineers who were fully competent and proficient in such work; (2) to prohibit a professional engineer from performing engineering work or a land surveyor from performing land surveying work in areas which involve the application of new principles, techniques, ideas or technology; (3) to prohibit a professional engineer from supervising other engineers or a land surveyor from supervising other land surveyors who may respectively be performing engineering work or land surveying work in areas other than those in which the supervising professional engineer or supervising land surveyor is fully competent and proficient; and (4) to prohibit a professional engineer from signing plans which include engineering work, portions of which were designed or required by any governmental agency.

However, the owner or tenant shall be notified of the proposed time of entry where practicable.

(b) The requirements of subdivision (a) do not apply to monuments within access-controlled portions of freeways.

(c) When required for a property survey, monuments within a freeway right-of-way shall be referenced to usable points outside the access control line by the agency having jurisdiction over the freeway when requested in writing by the registered civil engineer or licensed land surveyor who is to perform the property survey. The work shall be done within a reasonable time period by the agency in direct cooperation with the engineer or surveyor and at no charge to him.

This is the basic and primary law related to trespass rights. It is embodied in the California Civil Code (CCC) to assure that its application applies to all citizens and property owners.²

BUSINESS & PROFESSIONS CODE - Division 3 / Chapter 15 (PROFESSIONAL LAND SURVEYORS ACT) / Article 5

§8774.(a) The right of entry upon or to real property to investigate and utilize boundary evidence, and to perform surveys, is a right of persons legally authorized to practice land surveying, and it is the responsibility of the owner or tenant who owns or controls property to provide reasonable access without undue delay. The right of entry is not contingent upon the provision of prior notice to the owner or tenant. However, the owner or tenant shall be notified of the proposed time of entry where practicable.

(b) The requirements of subdivision (a) do not apply to monuments within access-controlled portions of freeways.

(c) When required for a property survey, monuments within a freeway right-of-way shall be referenced to usable points outside the access control line by the agency having jurisdiction over the freeway when requested in writing by the registered civil engineer or licensed land surveyor who is to perform the property survey. The work shall be done within a reasonable time period by the agency in direct cooperation with the engineer or surveyor and at no charge to him or her.

The provisions contained within Section 846.5 of the CCC were added to the Business and Professions Code to place this right and obligation under the purview of the Professional

² The California Civil Code is a collection of statutes which govern the general obligations and rights of persons within the jurisdiction of the State of California. The code is organized in a logical manner and a codification of well-established common law principles.

Land Surveyor's Act as a housekeeping measure by the state Legislature. In doing so, it assured that any changes or modifications, to the CCC trespass laws were legislatively tied to the practice of land surveying.

CALIFORNIA PENAL CODE - Trespass Issues - Part 1 / Title 14

§602.8.(a) Any person who without the written permission of the landowner, the owner's agent, or the person in lawful possession of the land, willfully enters any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or who willfully enters upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands, is guilty of a public offense.

(b) Any person convicted of a violation of subdivision (a) shall be punished as follows:

- (1) A first offense is an infraction punishable by a fine of seventy-five dollars (\$75).*
- (2) A second offense on the same land or any contiguous land of the same landowner, without the permission of the landowner, the landowner's agent, or the person in lawful possession of the land, is an infraction punishable by a fine of two hundred fifty dollars (\$250).*
- (3) A third or subsequent offense on the same land or any contiguous land of the same landowner, without the permission of the landowner, the landowner's agent, or the person in lawful possession of the land, is a misdemeanor.*

(c) Subdivision (a) shall not apply to any of the following:

- (1) Any person engaged in lawful labor union activities which are permitted to be carried out on property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act.*
- (2) Any person on the premises who is engaging in activities protected by the California or United States Constitution.*
- (3) Any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process.*
- (4) Any person licensed pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code who is engaged in the lawful practice of land surveying as authorized by Section 846.5 of the Civil Code.*

(d) For any infraction charged pursuant to this section, the defendant shall have the option to forfeit bail in lieu of making a court appearance. Notwithstanding subdivision (e) of Section 853.6, if the offender elects to forfeit bail pursuant to this subdivision, no further proceedings shall be had in the case.

The penal code is the section of state law that deals with criminal offenses and forms the basis for the application of criminal law within the State of California. Trespass is a serious matter as evidenced by the severity of the fines and the consequences of prosecution. It also places the importance of the professional land surveyor's rights and privilege to trespass in context with the absence of trespass rights for the general public.

CALIFORNIA CODE OF CIVIL PROCEDURE – Div. 2 / Pt. 2 / Title 10 / Chapter 3

§742 The Court in which an action is pending for the recovery of real property, or for damages for an injury thereto, or a Judge thereof may, on motion, upon notice by either party for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof, and of any tunnels, shafts, or drifts therein, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

Professional land surveyors are also permitted to enter upon real property to make certain measurements related to mining activities, separate and apart from the general rights of trespass. These provisions are contained within “Actions for the recovery of real property” and other provisions relating to actions concerning real property. The California Code of Civil Procedure, although similar to the Civil Code, sets forth the technical and legal procedures for certain actions.

CALIFORNIA CIVIL CODE

§3346(a) For wrongful injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times such sum as would compensate for the actual detriment, except that where the trespass was casual or involuntary, or that the defendant in any action brought under this section had probable cause to believe that the land on which the trespass was committed was his own or the land of the person in whose service or by whose direction the act was done, the measure of damages shall be twice the sum as would compensate for the actual detriment, and excepting further that where the wood was taken by the authority of highway officers for the purpose of repairing a public highway or bridge upon the land or adjoining it, in which case judgment shall only be given in a sum equal to the actual detriment.

(b) The measure of damages to be assessed against a defendant for any trespass committed while acting in reliance upon a survey of boundary lines which improperly fixes the location of a boundary line, shall be the actual detriment incurred if both of the following conditions exist:

(1) *The trespass was committed by a defendant who either himself procured, or whose principal, lessor, or immediate predecessor in title procured the survey to be made; and*

(2) *The survey was made by a person licensed under the laws of this State to practice land surveying.*

(c) *Any action for the damages specified by subdivisions (a) and (b) of this section must be commenced within five years from the date of the trespass.*

In general, if a private individual trespasses on someone else's property in good faith reliance on the work of a professional land surveyor, he/she is treated differently under the law as it is presumed that the work was done in reliance on the survey. This section also minimizes the normal damages associated with the cutting or removal of trees when done so with the benefit of a survey.

CALIFORNIA CODE OF CIVIL PROCEDURE

733. Any person who cuts down or carries off any wood or underwood, tree, or timber, or girdles or otherwise injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, village, or city lot, or cultivated grounds; or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action, in any Court having jurisdiction.

735. If a person recover damages for a forcible or unlawful entry in or upon, or detention of any building or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

As with the conventional destruction or removal of vegetation, the Code of Civil Procedure provides other penalties for cutting trees and other plants.

CALIFORNIA CODE OF CIVIL PROCEDURE

337.1.(a) Except as otherwise provided in this section, no action shall be brought to recover damages from any person performing or furnishing the design, specifications, surveying, planning, supervision or observation of construction or construction of an improvement to real property more than four years after the substantial completion of such improvement for any of the following:

(1) *Any patent deficiency in the design, specifications, surveying, planning, supervision or observation of construction or construction of an improvement to, or survey of, real property;*

*(2) Injury to property, real or personal, arising out of any such patent deficiency;
or*

(3) Injury to the person or for wrongful death arising out of any such patent deficiency.

(b) If, by reason of such patent deficiency, an injury to property or the person or an injury causing wrongful death occurs during the fourth year after such substantial completion, an action in tort to recover damages for such an injury or wrongful death may be brought within one year after the date on which such injury occurred, irrespective of the date of death, but in no event may such an action be brought more than five years after the substantial completion of construction of such improvement.

(c) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

(d) The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement at the time any deficiency in such an improvement constitutes the proximate cause of the injury or death for which it is proposed to bring an action.

(e) As used in this section, "patent deficiency" means a deficiency which is apparent by reasonable inspection.

(f) Subdivisions (a) and (b) shall not apply to any owner-occupied single-unit residence.

This provision sets forth the statute of limitations related to loss or damages to real property. Although a professional land surveyor has the legal right to trespass, he/she is not granted the right to destroy trees, structures or real property. In the event a professional land surveyor damages property while conducting his/her survey, he/she is still liable for the damage that occurred while conducting the trespass-permitted survey. This provision would suggest that if a claim was made against a professional land surveyor for damaging property, then it needs to be made within a timely manner.

CALIFORNIA CODE OF CIVIL PROCEDURE

2031.010. (a) Any party may obtain discovery within the scope delimited by Chapters 2 (commencing with Section 2017.010) and 3 (commencing with Section 2017.710), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by inspecting, copying, testing, or sampling documents, tangible things, land or other property, and electronically stored information in the possession, custody, or control of any other party to the action.

(b) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to copy a document that is in the possession, custody, or control of the party on whom the demand is made.

(c) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to photograph, test, or sample any tangible things that are in the possession, custody, or control of the party on whom the demand is made.

(d) A party may demand that any other party allow the party making the demand, or someone acting on that party's behalf, to enter on any land or other property that is in the possession, custody, or control of the party on whom the demand is made, and to inspect and to measure, survey, photograph, test, or sample the land or other property, or any designated object or operation on it.

(e) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect, copy, test, or sample electronically stored information in the possession, custody, or control of the party on whom demand is made.

If a formal legal proceeding is commenced, professional land surveyors and other qualified individuals are permitted to enter property to make certain measurements. It is unclear from a reading of Section 846.5 of the Civil Code and Section 8774 of the Business and Professions Code if the professional land surveyor has to be present while the survey is being performed. This code section would suggest that the professional land surveyor need not be actually present as the code states, *(d) A party may demand that any other party allow the party making the demand, or someone acting on that party's behalf, to enter on any land or other property that is in the possession, custody, or control of the party on whom the demand is made, and to inspect and to measure, survey, photograph, test, or sample the land or other property, or any designated object or operation on it.*

The Fair Employment and Housing Act California Government Code Section 12900-12951 & 12927-12928 & 12955 - 12956.1 & 12960-12976

The Fair Employment and Housing Act provides protection from harassment or discrimination in employment because of: age (40 and over), ancestry, color, creed, denial of family and medical care leave, disability (mental and physical) including HIV and AIDS, marital status, medical condition (cancer and genetic characteristics), national origin, race, religion, sex, and sexual orientation, status, disability, or sexual orientation in housing accommodations is declared to be against public policy. It is the purpose of this part to provide effective remedies that will eliminate these discriminatory practices. This part shall be deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state.

12920.5. In order to eliminate discrimination, it is necessary to provide effective remedies that will both prevent and deter unlawful employment practices and redress the adverse effects of those practices on aggrieved persons. To that end, this part shall be deemed an exercise of the Legislature's authority pursuant to Section 1 of Article XIV of the California Constitution.

12921.(a) The opportunity to seek, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation is hereby recognized as and declared to be a civil right.

(b) The opportunity to seek, obtain, and hold housing without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, disability, or any other basis prohibited by Section 51 of the Civil Code is hereby recognized as and declared to be a civil right.

12922. Notwithstanding any other provision of this part, an employer that is a religious corporation may restrict eligibility for employment in any position involving the performance of religious duties to adherents of the religion for which the corporation is organized.

Although the implications of discriminatory conduct appears to be an untested area of law as it relates to trespass, it is reasonable to conclude that these provisions would also suggest that the professional land surveyor need not be present while the trespass-permitted survey is conducted. A disability should not prohibit a duly licensed and authorized professional land surveyor from performing his/her work.

Surveyor's Obligation(s)

Section 602.8 of the California Penal Code addresses the trespass statute and the associated authority for professional land surveyors, while Section 846.5(a) of the California Civil Code and Section 8774 (a) of the Business & Professions Code states “The Right of Entry upon or to real property to investigate and utilize boundary evidence, and to perform surveys, is a right of persons legally authorized to practice land surveying, and it is the responsibility of the owner or tenant who owns or controls property to provide reasonable access without undue delay. The right of entry is not contingent upon the provision of prior notice to the owner or tenant. However, **the owner or tenant shall be notified of the proposed time or entry where practicable.**” (emphasis added) Although the rights to trespass allow the professional land surveyor to perform his/her work, it does not permit him/her to damage the property they are working on. Needless to say, individuals engaged in the practice of land surveying should always leave the premises in the same condition as it was before the commencement of the survey. This includes such things as leaving gates positioned as found, placing objects back where they were found if moved, and replacing any excavated material. Attempt to leave no trace, unless you have permission from the occupants. In the event damage does occur, the professional land surveyor should immediately notify the land owner to assure that the damages are properly and immediately mitigated for in spite of the fact that the professional land surveyor can trespass, he/she has no right to disturb, damage or ruin the land and improvements he/she is working on.

Conclusion

Since Section 2031.010 of the California Civil Code allows property to be inspected and surveyed without a license being required on site, it makes logical sense that a professional licensed surveyor is not required to be on site during the technical phase of the survey. It also may not be possible for some professional land surveyors to be physically present during the course of a site survey because of physical limitations. Although the California Penal Code §602.8 refers to any person licensed pursuant to the B & P code who is engaged in the lawful practice of land surveying, this does not mean the professional land surveyor is required to be on the site at all times. If you took that statement literally, it would mean none of his subordinates could enter the site since they were not licensed and would make most survey jobs impossible to accomplish. Because of these limitations and laws including the Fair Employment and Housing Act (California Government Code Section 12900-12951 & 12927-12928 & 12956.1 & 12960-12976), it would further support that a professional licensed surveyor need not be present for the survey activities taking place under his direction.

The surveyor should always be cautious when entering upon the lands of a neighboring property owner. Although one may have a legal right to enter the premises of an adjoined property, this may not prevent a claim of vandalism being lodged should a member of the crew damage a prized tree or trample a cherished flower garden, etc. In *Ragland v. Clarson*, 259 So.2d 757, (Florida, 1972), a lawsuit was filed against a surveyor for damage due to the cutting of plants³, trees, and other vegetation on plaintiff's land. The suit was brought notwithstanding a Florida statute that allowed registered engineers and land surveyors permission and authority relative to entry on, over, and upon the lands of others when necessary for the performance of land surveys. According to the statute, surveyors may enter upon the land, but are to be held responsible for any destruction, injuries, and/or damages that they may cause unless these damages are sanctioned pursuant to the written permission of the landowner. And as a sign of the times, particularly in rural areas, it is not uncommon for many property owners to be armed or predisposed to challenge trespassers and intruders. Consequently, the party chief should always carry photo identification along with his/her business card and the business card of the professional land surveyor in responsible charge, if they are not licensed. The professional land surveyor in charge of the crew should always carry his/her wallet license and a picture ID. In rural neighborhoods, it is advisable for the survey crew to wear brightly colored clothing and preferably, fluorescent colored vests for optimum visibility. When passing by any structures or buildings, it is good practice to leave a business card at the door or in any visible areas.

It is understood that the basic legislative intent is to protect the public health, safety and welfare by assuring land surveys be accomplished in the most efficient manner. However, it is imperative that members of the surveying profession do not abuse the rights they enjoy under the

³ Demma, James J. "Trespass Rights of the Surveyor." *American Surveyor* November 2005

existing right of entry statutes. One way to accomplish this is to obtain and use the Right of Entry Door Hangers available through the California Land Surveyors Association (www.californiasurveyors.org). The door hanger provides notification to the occupant of the property being surveyed and the person in responsible charge by someone filling in the appropriate information. It also states your survey crew will be in the neighborhood for the next several days or weeks. However, the door hanger does not provide notice of entry onto the person's property and may not fully satisfy the statutory requirements.

The notification can be accomplished, most effectively and efficiently by preparing a letter of notification. This letter should be addressed to the owners and/or occupants of adjoining and further-removed parcels over which the surveyor may need the rights of passage. The letter should:

- 1) State the dates and hours if known or the expected time frame the survey will be performed, as well as any special requirements to be fulfilled by the occupants in the interests of free and safe access;
- 2) Include a statement about the exact locations of boundaries are opined by collecting the best available evidence and temporary control markers may be set on their property to collect the evidence;
- 3) Include a request for copies of documents that may be held by the addressee, and that might influence the outcome of the survey (unrecorded boundary agreements, survey maps, plats);
- 4) Solicit knowledge regarding boundaries or survey markers in the area;
- 5) State the name of the responsible Professional Land Surveyor in charge of the survey work and;
- 6) State and include a copy of the "Right of Entry for Land Surveyors" pamphlet, prepared by the California Land Surveyors Association has been provided for their convenience to review.

A copy of the letter should also be sent to the local police or sheriff's department. This same law enforcement department should be contacted once again the day before the commencement of fieldwork. This will allow law enforcement sufficient time to notify the dispatcher who may alert the on-duty officers of the planned survey work within their patrol area. Such a last-minute reminder can make the difference between being recognized by the property owner or adjacent owners as a professional land surveyor, versus being a suspect of criminal intent. A sample letter is attached hereto as **Appendix "A."**

Disclaimers

The information contained in this document is the proprietary and exclusive property of the Land Surveyors Advisory Council on Technical Standards (except as otherwise indicated).

The information contained in this document is subject to change without notice.

This information in this document is provided for informational purposes only. The Land Surveyors Advisory Council on Technical Standards specifically disclaims all warranties, express or limited, including, but not limited, to the implied warranties of merchantability and fitness for particular purpose, except as provided for in a separate license agreement.

The author of this document, Lawrence A. Stevens, is a licensed land surveyor. That being said, Mr. Stevens is not an attorney. As such, nothing in this article may be construed as offering any legal advice. The article is for basic informational purposes only and does not contain legal advice or legal opinions by the author. Any substantive legal questions should always be addressed to competent licensed legal counsel. As such, Mr. Stevens is not and cannot be liable for offering any legal advice or opinions by offering this informational article for the reader's review and consideration.

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Contact Us

Web: www.lsacts.com

Appendix "A"

Date

Owners Name / Occupant
Street Name
City, CA Zip

RE: Land Survey of the Property at:
Site Street Name
City, CA

Dear Sir or Madam:

Over the next few weeks, our firm will conduct a boundary survey of the property commonly known as (address), California.

To insure a complete and comprehensive survey, we would appreciate it if you would consider providing us with copies of any survey maps, plats, survey notes, or any other pertinent information that you feel may aid in the establishment of boundary lines in your neighborhood. If such documentation exists, we would like to copy this material and return it to you as soon as possible. Alternately, if you can provide us with copies of this material, we would be most appreciative. Should you wish to show us any boundary markers or other objects that you feel may be pertinent to establishing any boundary lines you may be aware of, a meeting at a date and time mutually convenient may be arranged by contacting our office.

In accordance with our legal duties under California law, we will be searching for monuments, lines of occupation and related boundary evidence throughout the area. While performing the professional practice of land surveying, state law permits a Professional Land Surveyor and his/her subordinates the right to be on your property pursuant to Section 846.5 of the California Civil Code. Needless to say, we will inform you of our presence by announcing our arrival by knocking on your door or using any other notification devices before entering your property. If you need additional notification, please contact our office with your requirements for entry and we will make every effort to accommodate you. For your convenience we have enclosed a pamphlet entitled "Right of Entry for Land Surveyors" prepared by the California Land Surveyors Association. This may answer any of the questions you may have regarding land surveying.

During the preliminary stage of collecting evidence, survey stakes flagged with colored ribbons may be noticed. These typically denote “control” stations and may not necessarily note the location of boundary lines or corners. Should monuments be found or set at any property corner, they will be flagged and clearly identified with appropriate markings. Upon completion of our work, if any survey monuments are set or any undocumented evidence is revealed, a Record of Survey will be available at the County Recorder’s office or a Corner Record will be filed at the County Surveyor’s Office in accordance with State law once the survey is completed. A copy of the certified survey map should be reviewed before relying on any monument found on site.

Should you have any questions, please do not hesitate to contact us. Thank you in advance for your cooperation.

Appreciatively yours,

(Name of Licensed Land Surveyor, PLS XXXX)

(initials of PLS/lowercase initials of typist)

cc: File (job #); County Sheriff’s Office or City Police Department