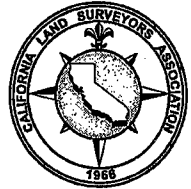




# JPPC-OC



**JOINT PROFESSIONAL PRACTICES COMMITTEE  
OF THE ORANGE COUNTY CHAPTERS OF THE  
CALIFORNIA LAND SURVEYORS ASSOCIATION AND  
CONSULTING ENGINEERS AND LAND SURVEYORS OF CALIFORNIA,  
IN COOPERATION WITH THE ORANGE COUNTY SURVEYOR'S OFFICE**

March 14, 2005

Ms. Cindi Christenson  
Executive Officer  
Board for Professional Engineers  
and Land Surveyors  
2535 Capitol Oaks Drive, Suite 300  
Sacramento, CA 95833-2944

Subject: **Applicability of Board Opinion of August 2, 1990  
(Tagging Monuments)**

Dear Ms. Christenson:

On August 2, 1990, a letter was issued by the Department of Consumer Affairs Legal Office expressing their opinion on "whether there is any law which requires a land surveyor who finds and uses an untagged monument to affix his or her own tag to that monument."

In our area, Orange County, there is continuing disagreement on this subject. The two views are generally:

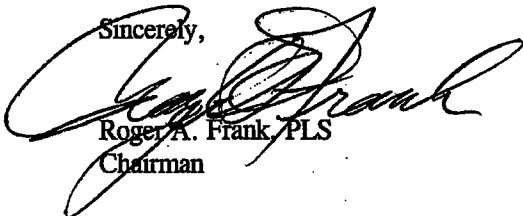
View 1. Section 8773.3 of the Professional Land Surveyor's Act requires that all points found without a reference and without a tag, be tagged by the finding surveyor. Also, that the Legal Office Opinion of August 2, 1990, was rendered null and void by the rescinding of the Board Policy Resolutions of 1995 through 1997.

View 2. The Legal Office Opinion of August 2, 1990, is still in effect and is still the official Opinion of the Board for Professional Engineers and Land Surveyors. This Opinion generally states that the law says "set" and that is what it means.

On two occasions in the past few months, surveyors from this area have submitted this question by phone and were appraised by Mr. Howard Brunner, again by phone, that the August 2, 1990, Opinion was still the Official Opinion and Policy of the Board.

Could we get this confirmation, in writing to satisfy all parties?

Sincerely,



Roger A. Frank, PLS  
Chairman

**c/o ROGER A. FRANK, PLS, CHAIRMAN**  
5150 E. Hunter Avenue, Anaheim, CA 92807  
PHONE: (714)777-8877 Ext 130 - FAX: (714)777-1641  
EMAIL: rogerfrank@johnson-frank.com

**STATE OF CALIFORNIA**

**Memorandum**

To: JERRY HURLBERT  
Program Manager  
Board of Registration for Professional  
Engineers and Land Surveyors

Date: August 2, 1990

Telephone: (916)445-4218

From: Department of Consumer Affairs  
Legal Office

Subject: Tagging Monuments

You have requested our opinion as to whether there is any law which requires a land surveyor<sup>1</sup> who finds and uses an untagged monument to affix his or her own tag to that monument.

**As a preliminary matter we will address the obligation of a land surveyor to file a record of survey upon his or her discovery of a monument which is untagged and undocumented.**

Section 8762 of the Business and Professions Code<sup>2</sup> requires a record of survey to be filed if a survey discloses among other things:

“(a) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.”

Section 8764 provides, in relevant part, that a record of survey shall show:

“(a) All monuments found, set, reset, replaced, or removed, describing their kind, size, and location, and giving other data relating thereto.”

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<sup>1</sup> In this opinion the term “land surveyor” includes civil engineers who were registered prior to 1982 and are authorized to practice land surveying.

<sup>2</sup> All statutory references used herein are to Business and Professions Code

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(b) Bearing or witness monuments, basis of bearings, bearing and length of lines, scale of map, and north arrow.

(c) Name and legal designation of the property in which the survey is located and the date or time period of the survey.

(d) The relationship to those portions of adjacent tracts, streets, or senior conveyances which have common lines with the survey.

(e) Memorandum of oaths.

(f) Statements required by Section 8764.5.

(g) Any other data necessary for the intelligent interpretation of the various items and location of the points, lines, and areas shown, or convenient for the identification of the survey or surveyor, as may be determined by the civil engineer or land surveyor preparing the record of survey.

These sections were enacted for the purpose of perpetuating the survey work of surveyors as public records in the form of maps.

In responding to the question, section 8762 and 8764 must be read together. Section 8762 requires a record of survey to be filed where a survey discloses "material evidence" which does not appear on any map or record of survey previously recorded with the county surveyor. It is apparent that the words "material evidence" in section 8762 includes the particular items mentioned in section 8764. Section 8764 requires that the record of survey must show both monuments "found" and "set". Therefore, section 8762 makes no distinction between monuments found during the survey and those set by the surveyor, both are material evidence which if not shown on official maps or records of survey previously filed with the county recorder necessitate the filing of a record of survey.

With respect to tagging monuments, section 8772 provides as follows:

"Any monument set by a licensed land surveyor or registered civil engineer to mark or reference a point on a property or land line shall be permanently and visibly marked or tagged with the certificate number of the surveyor or civil engineer setting it, each number to be preceded by the letter 'L.S.' or 'R.C.E.', respectively, as the case may be or, if the monument is set by a public agency, it shall

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be marked with the name of the agency and the political subdivision it serves.

Nothing in this section shall prevent the inclusion of other information on the tag which will assist in the tracing or location of the survey records which relate to the tagged monument.” (Emphasis added)

Section 8772 requires a land surveyor to tag any monument which he or she has “set”. It is a primary rule of statutory construction to ascertain and give effect to the plain meaning of the language used. In re: Richards Estate, (1955) ???P.20.857. The dictionary defines “set” as “1. To put in a certain place or position; place. 2. To put into a fixed or immovable position, place.” Funk and Wagnall’s Standard College Dictionary, 1968, pp. 129. Applying the plain meaning of the word “set,” a land surveyor would be required to tag only monuments which he or she has placed into the ground. This would encompass monuments which he or she has placed in the ground to establish new points or to rehabilitate monuments which have been found in a deteriorated condition.

Section 8772 requires a land surveyor to tag monuments which he or she has actually set in the ground. It does not impose an obligation to tag undocumented and untagged monuments which are found and used by a surveyor in his or her survey. To require a land surveyor to tag an undocumented and untagged monument which he or she has used in his or her survey would require the board to interpret the setting of a monument as including the mere “use” of a monument by a surveyor. A consequence of such an interpretation would be to require that whenever a land surveyor used or relied upon pre-existing monuments, he or she would have to place his or her own tag upon such monuments. Such an interpretation would result in the obliteration of the tags of previous land surveyors and would be illogical. It is thus our opinion that section 8772 does not require a land surveyor to tag an undocumented and untagged monument which he or she has used in his or her survey.

We would also question the need from a practical standpoint to tag an untagged monument. The purpose of tagging a monument is to identify the person who set the monument so that if future questions arise, recourse may be had to the surveyor’s field notes. **Where a subsequent surveyor finds and uses an undocumented and untagged monument, the surveyor would be required to file a record of survey which discloses the existence of the untagged monument.** Thereafter, subsequent land surveyors would be put on notice of the existence of this monument and they would have a reference to the records and field notes of the surveyor who discovered the monument. We do not see any

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additional value to requiring a land surveyor to tag an untagged monument since he or she is already required to file a record of survey which discloses the existence of the untagged monument.

In addition, our research has been unable to disclose any statutory provision or case law which holds that an untagged monument is an "illegal" monument. A monument is given legal affect or recognition when it is noted in official maps or record of surveys which are filed with the county surveyor. The tagging of untagged monument does not add to the value of that monument, but would merely duplicate information which is required to be contained in the record of survey filed by the land surveyor who found the untagged monument.

In conclusion, it is our opinion that a land surveyor is not legally obligated to tag an undocumented and untagged monument which he or she has used in his or her survey.

We trust that the foregoing is of assistance. Please feel free to call if you have any further questions.

JEFF MARSCHNER??

Deputy Director

Legal Affairs

By DONALD CHANG

Staff Counsel

DC:???



## BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

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April 6, 2005

Roger A. Frank, PLS  
Chairman  
JPPC-OC  
5150 E. Hunter Avenue.  
Anaheim, CA 92807

Dear Mr. Frank,

Thank you for your letter dated March 14, 2005, regarding the legal opinion dated August 2, 1990, concerning tagging monuments.

As it has been advised verbally, the opinion is still in effect.

I trust this will assist you in disseminating information to the parties which are in disagreement.

Sincerely,

CINDI CHRISTENSON, P.E.  
Executive Officer