

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 81-103
	:	
of	:	<u>MARCH 19, 1981</u>
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Rodney O. Lilyquist	:	
Deputy Attorney General	:	
	:	

The Board of Registration for Professional Engineers has requested an opinion on the following question:

Does the filing of a corner record pursuant to Business and Professions Code section 8773 eliminate the need to file a record of survey after the establishment of points or lines pursuant to Business and Professions Code section 8762?

CONCLUSION

The filing of a corner record pursuant to Business and Professions Code section 877 does not eliminate the need to file a record of survey after the establishment of points or lines pursuant to Business and Professions Code section 8762.

ANALYSIS

The question presented for analysis concerns the relationship between the filing of a “corner record” and of a “record of survey” under the provisions of the Land Surveyors Act (Bus. & Prof. Code §§ 8700-8805).¹ Specifically, we are asked whether the filing of the former obviates the need for filing the latter where “points” or “lines” are newly established. We conclude that under such circumstances, a corner record is not an alternative to the express requirement for filing a record of survey. A “corner record” is “a written record of corner establishment or restoration” which a “licensed land surveyor or registered civil engineer shall complete, sign, and stamp with his seal,” where the corner has been “found, set, reset, or used as control in any survey by such land surveyor or civil engineer.” (§ 8773.)

As directed by section 8773.1, the Board of Registration for Professional Engineers (hereafter “Board”) has prescribed the information to be included in a corner record as follows:

“(a) The corner record required by Section 8773 of the Code for the perpetuation of monuments shall contain the following information:

“(1) The County in which the corner is situated.

“(2) An identification of the township, range, base and meridian in which the corner is located.

“(3) Identification of the type of corner (section, township, quarter, etc.) as specified in the Manual of Instructions for the Public Lands of the United States or reference map when other monuments have been reset or perpetuated.

“(4) A description of the physical condition of the monument found or reset.

“(5) The date of the most recent visit to the monument.

“(6) A drawing showing courses and distances which ties the corner to other identifiable reference works.

¹ All section references hereafter are to the Business and Professions Code unless otherwise stated.

“(7) A reference to the California Coordinate System, if known.

“(8) The date of preparation of the corner record, the signature of the licensee or registrant, and the license or registration number of the land surveyor or registered civil engineer making the corner record.

“(9) The date the corner record was filed and the title and name of the county surveyor or engineer.

“(10) A document of filing number.

“(b) A corner record shall be filed for each public land survey corner which is found, reset, or used as control in any survey by a licensed land surveyor or a registered engineer. Exceptions to this rule are identified in Section 8773.4 of the Land Surveyors Act.

“(c) The corner record shall be filed within 90 days from the date it was found, reset, or used as control in any survey.

“(d) A corner record may be filed for any property corner, property controlling corner, reference monument, or accessory to a property corner, together with reference to record information.

“(e) The standard markings and standard abbreviations used by the Bureau of Land Management (formerly the General Land Office) of the United States Department of the Interior shall be used in the corner record.” (Cal. Admin. Code, tit. 16, § 464.)

A corner record that is filed with the county surveyor or engineer must be first examined by the county officer, and then “securely fastened by him into a suitable book.” (§ 8773.2, subd. (c).) Subdivision (d) of section 8773.2 authorizes a fee for such services as follows:

“A charge for examining, indexing and filing the corner record may be collected by the county surveyor, not to exceed the amount required for the recording of a deed.”

Section 8773.3 provides that where a corner record is filed,

“ . . . the licensed land surveyor or registered civil engineer shall reconstruct or rehabilitate the monument of such corner, and accessories to

such corner, so that the same shall be left by him in such physical condition that it remains as permanent a monument as is reasonably possible and so that the same may be reasonably expected to be located with facility at all times in the future.”²

Significant to our discussion is the fact that not all corner records need to be filed. Section 8773 states in full:

“(a) A licensed land surveyor or registered civil engineer *shall* complete, sign, stamp with his seal and *file* with the county surveyor or engineer of the county where the corner is situated, a written record of a corner establishment or restoration to be known as a “coiner record” *for every public land survey corner*, as defined by the Manual of Instructions for the Survey of the Public Lands of the United States, and accessory to such corner which is found, set, reset, or used as control in any survey by such land surveyor or civil engineer. any property corner, property controlling corner, reference monument, or accessory to a property corner which is found, set, reset, or used as control in any survey by such land surveyor or civil engineer.” (Italics added.)

“(b) A licensed land surveyor or registered civil engineer *may file* such corner record *for any property corner*, property controlling corner, reference

² A “monument” is set for ‘the perpetuation or facile re-establishment of any point or line of the survey.’ (§ 8771.) Section 8772 states:

“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 letters, ‘L.S.’ or ‘R.C.E.’ respectively, as the case may be or, if the monument is set by a public agency, it shall be marked with the name of the agency and the political subdivision it serves.”

“Accessories” commonly include (1) natural objects such as bearing trees, notable cliffs, and boulders, (2) permanent improvements, (3) mounds of stone, (4) pits, and (5) such durable articles as glassware, stoneware, and pieces of metal. As stated in the authoritative reference book on the subject:

“The purpose of an accessory is to evidence the position of the corner monument. A connection is made from the corner monument to fixed natural or artificial objects in its immediate vicinity, whereby the corner may be relocated from the accessory, thus in the event of the destruction or removal of the monument, its position may be identified as long as any part of the accessories remains in evidence.” (Manual of Instruction for the Survey of the Public Lands of the United States (U.S. Dept. of the Interior 1947) § 316, p. 271; hereafter “Manual.”)

monument, or accessory to property corner which found, set, reset, or used as control in any survey by such land surveyor or civil engineer.” (Italics added.)

The Manual defines the public land survey corners as follows:

“The ‘corners’ of the public land surveys are those that determine the boundaries of the various subdivisions which are represented on the official plat, i.e.—the township corner, the section corner, the quarter-section corner, the meander corner.”³ (Manual, *supra*, § 349, p. 282.)

Accordingly, for these specified corners, a corner record must generally be filed whenever such corner “is found, set, reset, or used as control in any survey.” (§ 8773, subd. (a).)

All other property corners, however, need not have a corner record filed when found, set, reset, or used as control in a survey.⁴

Additionally, subdivision (b) of section 8773.4 expressly provides:

“No corner record need be filed when:

“(1) A corner record is on file and the corner is found as described in the existing corner record.

“(2) All conditions of Section 8773 are complied with by proper notations on a record of survey map filed in compliance with the Land Surveyor’s Act or a parcel or subdivision map, in compliance with the Subdivision Map Act.”

³ A “township” is six miles square, a “section” is six hundred and forty acres, a “quarter section” is one hundred and sixty acres, and a meander” refers to all navigable bodies of water, important rivers and lakes that are segregated from the public lands at mean high-water elevation; the “traverse of the margin of a permanent natural body of water is termed a meander line.” (Manual, *supra*, § 226, p. 230.)

⁴ Where the Legislature uses both the terms “shall” and “may” in the same statute, the former is reasonably construed as mandatory and the latter as permissive. (See *In re Richard E.* (1978) 21 Cal. 3d 349, 353–354; *Hogya v. Superior Court* (1977) 75 Cal. App. 3d 122, 133, fn. 8; *Cannizzo v. Guarantee Ins. Co.* (1966) 245 Cal. App. 2d 70, 73; *National Automobile Etc. Co. v. Garrison* (1946) 76 Cal. App. 2d 415, 417.)

The statutory scheme for the filing of records of survey is similar to that for the filing of corner records. A record of survey is “a map, legibly drawn, printed, or reproduced by a process guaranteeing a permanent record in black or tracing cloth, or polyester base film, 18 by 26 inches.” (§ 8763.) Section 8764 describes the contents of a record of survey as follows:

“The 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.

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

“(c) Name and legal designation of tract or grant in which the survey is located and ties to adjoining tracts.

“(d) Memorandum of oaths.

“(e) Certificates required by Section 8764.5.

“(f) Any other data necessary for the intelligent interpretation of the various items and locations of the points, lines and areas shown.”

A record of survey filed with the county surveyor must be examined with respect to its accuracy of mathematical data, completeness of information, conformity to other records, and compliance with all statutory requirements. (§ 8766; see 34 Ops. Cal. Atty. Gen. 39, 40–41 (1959); 30 Ops. Cal. Atty. Gen. 119, 120–121 (1957).) Section 8767 provides:

“If the county surveyor finds the record of survey to be satisfactory he shall indorse a statement on it of his examination, and shall present it to the county recorder for filing. Otherwise he shall return it to the person who presented it, together with a written statement of the changes necessary to make it conform to the requirements of this chapter.”

The county surveyor may charge a fee to cover the cost of examining a record of survey. (§ 8766.5.) A charge may also be imposed for filing the record of survey. (§ 8769.)

It is to be particularly noted, however, that not all records of survey need be filed. Section 8762 states:

“After making a survey in conformity with the practice of land surveying, the surveyor or civil engineer *may file* with the county surveyor in the county in which the survey is made, a record of such survey.

“Within 90 days *after the establishment of points or lines* the licensed land surveyor or registered civil engineer shall file with the county surveyor in the county in which the survey was made, a record of such survey relating to land boundaries or property lines . . .” (Italics added.)

It is thus apparent that only where points or lines are newly established need a record of survey be filed.

Additionally, section 8765 expressly provides that a record of survey need not be filed in the following circumstances:

“A record of survey is not required of any survey:

“(a) When it has been made by a public officer in his official capacity and a reproducible copy thereof, showing all data required by Section 8764, except the recorder’s certificate, has been filed with the county surveyor of the county in which the land is located. Any map so filed shall be indexed and kept available for public inspection.

“(b) Made by the United States Bureau of Land Management.

“(c) When a map is in preparation for recording or shall have been recorded under the provisions of the Subdivision Map Act.

“(d) When the survey is a retracement of lines shown on a subdivision map or parcel map of record, where no material discrepancies with such records are found and sufficient monumentation is found to establish the precise location or property corners thereon, provided that a corner record is filed for any property corners which are reset on such survey.”

Finally, the Board’s rule 465 allows a surveyor or civil engineer to omit filing a record of survey even where the lines are newly established, as long as the “newly established lines can be determined by inspection of a map of record without the use of trigonometric calculations.” (Cal. Admin. Code, tit. 16, § 465, subd. (b).)

In construing these statutes, especially sections 8762 and 8773, in order to determine whether a corner record may be filed as an alternative to a record of survey, we

are guided by several well recognized rules of statutory construction. Fundamentally, statutes dealing with the same subject matter should be read together and harmonized so as to carry out the intent of the statutory scheme as a whole. (*California Mfgs. Assn. v. Public Utilities Com.* (1979) 24 Cal. 3d 836, 844; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal. 3d 227, 230–231; *Select Base Materials v. Board of Equal.* (1959) 51 Cal. 2d 640, 645.) Another principle relevant to our discussion was stated by the Supreme Court in *Wildlife Alive v. Chickering* (1976) 18 Cal. 3d 190, 195, as follows: “Under the familiar rule of construction, *expressio unius est exclusio alterius*, where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed.” Moreover, in *People v. Drake* (1977) 19 Cal. 3d 749, 755, the Supreme Court reaffirmed the principle that ““Where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed.””

Applying these rules, we note first that, although somewhat similar in nature, a corner record and a record of survey are not equivalent in scope or significance. Nevertheless, the Legislature has provided for their use as alternatives under expressly limited circumstances. A corner record need not be filed if a proper record of survey is filed and other conditions are met. (§ 8773.4, subd. (b).) On the other hand, a record of survey need not be filed if a corner record is filed (where property corners are reset) and if “the survey is a retracement of lines shown on a subdivision map or parcel map of record, where no material discrepancies with such records are found and sufficient monumentation is found to establish the precise location of property corners thereon.” 8765, subd. (d).)

We believe that the Legislature’s intent is clearly discernible from the plain language it has used in the statutory scheme. (See *People v. Belleci* (1979) 24 Cal. 3d 879, 884; *People v. Boyd* (1979) 24 Cal. 3d 285, 294.) It has provided for corner records and records of survey to be filed as alternatives but only in narrowly defined situations. The factual setting presented for analysis does not come within the legislative enactments allowing for the filing of a corner record as a substitute for a record of survey. Here we do not have the retracement of lines previously established; rather, we have newly established points and lines.

We therefore conclude that the filing of a corner record pursuant to section 8773 does not eliminate the need to file a record of survey after the establishment of points or lines pursuant to section 8762.
