

1 BEFORE THE ARIZONA STATE  
2 BOARD OF TECHNICAL REGISTRATION

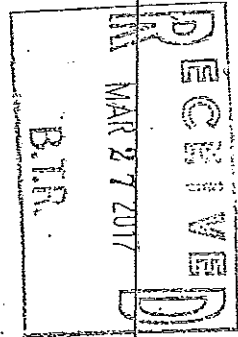
3 In the Matter of:

Case No.: P16-046

4 John Ware  
5 Land Surveyor  
6 Registration No. 37937

Respondent

CONSENT AGREEMENT  
and  
ORDER OF DISCIPLINE



7  
8  
9 In the interest of a prompt and judicious resolution of the above-captioned matter  
10 before the Arizona State Board of Technical Registration ("Board") and consistent with  
11 the public interest, statutory requirements, and the responsibilities of the Board, and  
12 pursuant to A.R.S. § 32-101 *et seq.*, and A.A.C. R4-30-120(G), the undersigned party,  
13 John Ware ("Respondent"), holder of Registration No. 37937, and the Board enter into  
14 the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent  
15 Agreement") as a final disposition of this matter.

16 RECITALS

17 1. Respondent has read and understands this Consent Agreement and has had  
18 the opportunity to discuss this Consent Agreement with an attorney, or has waived the  
19 opportunity to discuss this Consent Agreement with an attorney.

20 2. Respondent understands that he has a right to a public administrative hearing  
21 concerning this case. He further acknowledges that at such formal hearing he could  
22 present evidence and cross-examine witnesses. By entering into this Consent Agreement,  
23 Respondent knowingly, voluntarily, and irrevocably waives his right to such an  
24 administrative hearing, as well as rights of rehearing, review, reconsideration, appeal,  
25 judicial review or any other administrative and/or judicial action concerning the matters  
26 set forth herein.

27 3. Respondent affirmatively agrees that this Consent Agreement shall be  
28 irrevocable.

1           4. Respondent understands that this Consent Agreement or any part of the  
2 agreement may be considered in any future disciplinary action by the Board against him.

3           5. The Consent Agreement, any record prepared in this matter, all investigative  
4 materials prepared or received by the Board and all related exhibits and materials, are  
5 public records (as defined in A.R.S. § 41-158.18) upon acceptance by the Board of this  
6 Consent Agreement and may be retained in the Board's files pertaining to this matter.

7           6. Respondent understands this Consent Agreement deals with Board case  
8 number P16-046, involving allegations that Respondent engaged in conduct that would  
9 subject him to discipline under the Board's statutes and rules. The investigation into  
10 these allegations against Respondent shall be concluded upon the Board's adoption of  
11 this Consent Agreement.

12           7. Respondent understands that this Consent Agreement does not constitute a  
13 dismissal or resolution of any other matters currently pending before the Board, if any,  
14 and does not constitute any waiver, express or implied, of the Board's statutory authority  
15 or jurisdiction regarding any other pending or future investigation, action or proceeding.

16           8. Respondent also understands that acceptance of this Consent Agreement does  
17 not preclude any other agency, subdivision, or officer of this State from instituting any  
18 other civil or criminal proceedings with respect to the conduct that is the subject of this  
19 Consent Agreement.

20           9. Respondent acknowledges and agrees that, upon signing this Consent  
21 Agreement and returning this document to the Board's Executive Director, he may not  
22 revoke his acceptance of the Consent Agreement or make any modifications to the  
23 document regardless of whether the Consent Agreement has been signed on behalf of the  
24 Board. Any modification to this original document is ineffective and void unless  
25 mutually agreed by the parties in writing.

26           10. This Consent Agreement is subject to the approval of the Board and is  
27 effective only when accepted by the Board and signed on behalf of the Board. If the  
28 Board does not accept this Consent Agreement, the Board retains its authority to hold a

1 formal administrative hearing pursuant to A.R.S. § 32-128(E). In the event that the  
2 Board does not approve this Consent Agreement, it is withdrawn and shall be of no  
3 evidentiary value and shall not be relied upon nor introduced in any action by any party,  
4 except that the parties agree that should the Board reject this Consent Agreement and this  
5 case proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced  
6 by its review and discussion of this document or any records relating thereto.

7 11. If a court of competent jurisdiction rules that any part of this Consent  
8 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement  
9 shall remain in full force and effect.

10 12. Respondent understands that any violation of this Consent Agreement may  
11 result in disciplinary action, including suspension or revocation of the registration under  
12 A.R.S. § 32-150.

13 13. Respondent agrees that the Board will adopt the following Findings of Fact,  
14 Conclusions of Law and Order.

15 FINDINGS OF FACT

16 1. The Board is the duly constituted authority for the regulation and control of  
17 the practice of Land Surveying in the State of Arizona.

18 2. Respondent is the holder of Arizona Professional Land Surveyor Registration  
19 No. 37937.

20 3. On January 8, 2016, the Board received a complaint alleging that  
21 Respondent performed a boundary survey for a property located in Maricopa County,  
22 Arizona, 12B14-WUSA, APN: 211-67-060, in which Respondent failed to meet Arizona  
23 Boundary Survey Minimum Standards ("ABSMS").

24 4. On February 27, 2017, An Enforcement Advisory Committee ("EAC") was  
25 convened at the Board office to review the complaint against Respondent. After  
26 interviewing the Allegor, Respondent, and considering the evidence in this case, the  
27 committee found that:

28 A. Respondent failed to research the physical evidence available by not

1 searching for physical evidence at the corners of the east and west adjoining parcels that  
2 would have recovered the monuments called out in MCR-Book 794, Page 11, that were  
3 set in 2005, in violation of ABSMS No.4.

4 B. Respondent failed to disclose evidence and explain in detail on his Results  
5 of Survey why he rejected the existing southerly monuments, in violation of ABSMS  
6 No.8 (A).

7 C. Respondent failed to examine existing recorded documents needed to  
8 perform a survey and missed the recorded Results of Survey during his research, in  
9 violation of ABSMS No.2.

10 D. Respondent failed to contact and discuss with another Registrant a  
11 disagreement regarding a monumented corner position, in violation of ABSMS No.7.

12 5. The committee further expressed concern with Respondent's lack of  
13 knowledge concerning boundary law and Respondent's misinterpretation of ABSMS No.  
14 13(E). The committee recommended that Respondent receive remedial education in  
15 boundary law and participate in peer review.

#### 16 CONCLUSIONS OF LAW

17 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq.

18 2. The conduct alleged in the Findings of Fact constitutes grounds for discipline  
19 pursuant to A.R.S. § 32-128 (C)(4), as it relates to A.A.C. R4-30-301(13), in that  
20 Respondent failed to conduct a boundary survey in accordance with the Arizona  
21 Boundary Survey Minimum Standards.

#### 22 ORDER

23 Based on the foregoing Findings of Fact and Conclusions of Law, the Board issues  
24 the following Order:

25 1. LETTER OF REPRIMAND. Respondent is hereby issued a Letter of  
26 Reprimand.

27 2. STAYED REVOCATION AND PROBATION. Respondent's registration  
28 as a Registered Land Surveyor, registration No.37937, shall be revoked; however, the

1 revocation is stayed for as long as Respondent remains in compliance with this Order.  
2 During the stay of revocation, Respondent's registration as a Registered Land Surveyor is  
3 placed on probation for twelve (12) months. If Respondent is non-compliant with any  
4 terms of this Order during the probationary period, the stay of the revocation shall be  
5 lifted and Respondent's registration as a Registered Land Surveyor shall be automatically  
6 revoked without a formal hearing.

7 3. REMEDIAL EDUCATION. Within six (6) months from the effective date  
8 of this Consent Agreement, Respondent shall provide proof to the Board that he has  
9 successfully completed a Board approved training program related to the surveying  
10 fundamentals and boundary law for Land Surveyors consisting of no less than forty (40)  
11 hours.

12 4. PEER REVIEW. Within twelve (12) months, Respondent shall submit his  
13 next two (2) Land Boundary Survey projects for peer review. Within Sixty (60) days of  
14 the effective date of this Consent Agreement, Respondent shall furnish to the Board, the  
15 name of an Arizona Registered Land Surveyor ("Peer Reviewer") who agrees to review  
16 and report on Respondent's work. The proposed Peer Reviewer shall have at least five  
17 years of actual engagement as a Registered Land Surveyor with expertise in Boundary  
18 Surveys, shall be registered and in good standing with the Board and shall not have  
19 received any disciplinary action from the Board within the last three years. Respondent  
20 shall submit to the Board a current resume detailing the qualifications of the proposed  
21 Peer Reviewer, and an Affidavit and Agreement to Conduct Peer Review signed by the  
22 proposed Peer Reviewer. Upon approval by the Board of the Peer Reviewer, Respondent  
23 shall ensure that the Peer Reviewer provides a written report to the Board after each peer  
24 reviewed project describing any deficiencies in Respondent's practice, and certifying that  
25 the peer reviewed project provided to the client by the Respondent is in compliance with  
26 Board rules and statutes. Respondent shall not give final approval on any projects to a  
27 client, contractor, any regulatory or review body or any other person until the project has  
28

1 been reviewed and approved by the Peer Reviewer. Respondent shall retain the Peer  
2 Reviewer at his own expense.

3 5. ADMINISTRATIVE PENALTY. Within Ten (10) months from the  
4 effective date of this Consent Agreement, Respondent shall pay an administrative penalty  
5 of One Thousand Dollars (\$1,000.00) by certified check or money order made payable to  
6 the State of Arizona Board of Technical Registration. The Respondent shall make Ten  
7 Payments of One Hundred Dollars (\$1000.00), with the first payment to be submitted on  
8 the first of the month following the Board's acceptance of the agreement.

9 6. COST OF INVESTIGATION. Within Sixty (60) days from the effective  
10 date of this Consent Agreement, Respondent shall pay the cost of investigation of this  
11 case to the Board in the amount of Five Hundred Sixty-Six Dollars (\$566.00) by certified  
12 check or money order made payable to the State of Arizona Board of Technical  
13 Registration, according to the provisions of A.R.S. § 32-128(H).

14 7. OBEY ALL LAWS. Respondent shall obey all federal, state and local  
15 laws, as well as, all rules governing the practice of Land Surveying in the State of  
16 Arizona. The Board shall consider any violation of this paragraph to be a separate  
17 violation of the rules and statues governing the Arizona Board of Technical Registration.  
18 The Board may also consider Respondent's non-compliance with this Order as a separate  
19 violation of A.R.S. § 32-150.

20 8. RENEWAL OF REGISTRATION. Respondent shall timely renew his  
21 Arizona registration as a Land Surveyor and timely pay all required registration fees.

22 9. EFFECTIVE DATE. The effective date of this Consent Agreement is the  
23 date the Respondent and Board sign the Consent Agreement. If the dates are different, the  
24 effective date is the later of the two dates.

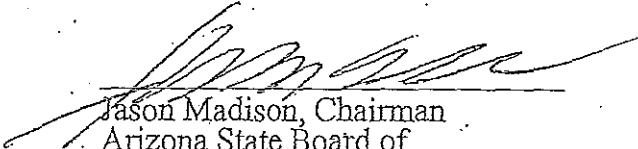
25 10. COSTS OF COMPLIANCE. Respondent shall pay all costs associated  
26 with complying with this Consent Agreement.

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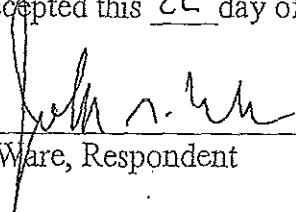
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1 11. NONCOMPLIANCE. If Respondent violates this Order in any way or fails  
2 to fulfill the requirements of this Order, the Board, after giving notice and the opportunity  
3 to be heard, may revoke, suspend or take other disciplinary actions against the  
4 registration. The issue at such a hearing will be limited solely to whether this Order has  
5 been violated.

6 ACCEPTED and ORDERED this 20<sup>th</sup> day of MARCH, 2017.

7  
8   
9 Jason Madison, Chairman  
Arizona State Board of  
10 Technical Registration

11  
12 Consent Agreement and Order, No. P16-046 accepted this 21 day of  
13 March, 2017.

14   
15 John Ware, Respondent

16 ORIGINAL filed this 28 day of  
17 MARCH, 2017, with:

18 Arizona State Board of Technical Registration  
19 1110 W. Washington, Suite 240  
Phoenix, AZ 85007

20 COPY of the foregoing mailed via Certified Mail  
21 No. 9214 8901 9434 4600 0128 34 and  
22 First Class mail this 30 day of MARCH, 2017, to:  
23 John Ware  
24 11445 East Via Linda, Suite 2-447  
25 Scottsdale, AZ 85259

26 By: D Keama  
27  
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