

BEFORE THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION

In the Matter of:

Case No.: P21-074

David Sutherland
Registered Land Surveyor
Registration No. 30365

CONSENT AGREEMENT
and
ORDER OF DISCIPLINE

SutherLand Survey, LLC
Firm Registration No. 16625 (Expired)
Current Registration No. 23331

Respondents

In the interest of a prompt and judicious resolution of the above-captioned matter before the Arizona State Board of Technical Registration (“Board”) and consistent with the public interest, statutory requirements, and the responsibilities of the Board, and pursuant to A.R.S. § 32-101 et seq., and A.A.C. R4-30-120(G), the undersigned party, David Sutherland (“Respondent”), holder of Registration No. 30365, SutherLand Survey, LLC (“Respondent Firm”), holder of Registration Firm No. 16625 (Expired), Current Firm Registration No. 23331, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order (“Consent Agreement”) as a final disposition of this matter.

RECITALS

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

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

1 3. Respondent affirmatively agrees that this Consent Agreement shall be
2 irrevocable.

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

5 5. The Consent Agreement, any record prepared in this matter, all investigative
6 materials prepared or received by the Board and all related exhibits and materials, are
7 public records upon acceptance by the Board of this Consent Agreement and may be
8 retained in the Board's files pertaining to this matter.

9 6. Respondent understands this Consent Agreement deals with Board case
10 number P21-074 involving allegations that Respondent engaged in conduct that would
11 subject him to discipline under the Board's statutes and rules. The investigation into
12 these allegations against Respondent shall be concluded upon the Board's adoption of
13 this Consent Agreement.

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

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

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

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1 5. It is further alleged that Respondent and Respondent Firm engaged in the
2 practice of Land Surveying without firm registration with the Board. Records show that
3 Respondent Firm's registration expired on October 31, 2011.

4 6. On or about May 26, 2021, Respondent acknowledged that he did not renew
5 Respondent Firm and indicated that he simply forgot to do so.

6 7. On or about June 10, 2021, Respondent Firm's registration was reinstated
7 and was assigned Registration No. 23331.

8 8. Respondent Firm engaged in the practice of Land Surveying without firm
9 registration with the Board from October 31, 2011 until June 10, 2021.

10 9. On December 1, 2021, an Enforcement Advisory Committee ("EAC") was
11 convened to review the complaint against Respondent. After reviewing the evidence and
12 interviewing Alleger and Respondent, the Committee determined the Record of Survey
13 was inefficient in information; therefore, would be very difficult for another Land
14 Surveyor to be able to determine what Respondent's survey was trying to accomplish.
15 The Committee agreed that deficiencies in the survey far outweigh any useful
16 information. The Committee also expressed concern that Respondent needed to revise the
17 legal descriptions multiple times due to Respondent's errors.

18 10. During the EAC, Respondent acknowledged that the legal descriptions
19 contained errors, which he corrected. Respondent also confirmed that the Record of
20 Survey was not yet recorded.

21 11. Respondent provided the client with a Record of Survey that included
22 Respondent's seal only. The client confirmed that he was under the impression that the
23 Record of Survey was the finalized product; however, it is Respondent's position that the
24 Record of Survey was a work in progress product. The Record of Survey is not marked
25 "preliminary", "draft", or "not for construction".

CONCLUSIONS OF LAW

- 27 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq.
- 28 2. The conduct alleged in the Findings of Fact constitutes grounds for discipline

1 pursuant to A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(13), in that
2 Respondent failed to conduct a land survey in accordance with the Arizona Boundary
3 Survey Minimum Standards.

4 3. The conduct alleged in the Findings of Fact constitutes grounds for discipline
5 pursuant to A.R.S. 32-128(C)(4) as it relates to A.A.C. R4-30-301(6) in that Respondent
6 failed to apply the appropriate technical knowledge and skill in the practice of a Board
7 regulated profession.

8 4. The conduct alleged in the Findings of Fact constitutes grounds for
9 discipline pursuant to A.R.S. 32-121, A.R.S. 32-141 and A.R.S. 32-128(C)(4) as it relates
10 to A.A.C. R4-30-301(4) in that Respondent and Respondent Firm practiced or offered to
11 practice a Board regulated profession without firm registration with the Board.

12 **ORDER**

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

15 1. LETTER OF REPRIMAND. Respondent is hereby issued a Letter of
16 Reprimand.

17 2. STAYED SUSPENSION AND PROBATION. Respondent's registration as
18 Registered Land Surveyor, No. 30365, shall be suspended for Six (6) months; however,
19 the suspension is stayed for as long as Respondent remains in compliance with this
20 Order. During the stay of suspension, Respondent's registration as a Registered Land
21 Surveyor is placed on probation for Six (6) months. If Respondent is non-compliant with
22 any terms of this Order during the Six (6) months stayed suspension and probation
23 period, the stay of the suspension shall be lifted and Respondent's registration as a
24 Registered Land Surveyor shall be automatically suspended without a formal hearing,
25 and remain suspended until Respondent is compliant with all terms of this Order.

26 3. PEER REVIEW. Respondent shall submit his next two (2) Land Boundary
27 Survey projects for peer review. Within Six (6) months of the effective date of this
28 Consent Agreement, Respondent shall furnish to the Board, the name of an Arizona

1 registered Land Surveyor (“Peer Reviewer”) who agrees to review and report on
2 Respondent’s work. The proposed Peer Reviewer shall have at least five years of actual
3 engagement as a Land Surveyor with expertise in Land Boundary Survey projects, shall
4 be registered and in good standing with the Board and shall not have received any
5 disciplinary action from the Board within the last three years. Respondent shall submit to
6 the Board a current resume detailing the qualifications of the proposed Peer Reviewer,
7 and an Affidavit and Agreement to Conduct Peer Review signed by the proposed Peer
8 Reviewer. Upon approval by the Board of the Peer Reviewer, Respondent shall ensure
9 that the Peer Reviewer provides a written report to the Board after each peer reviewed
10 project describing any deficiencies in Respondent’s practice, and certifying that the peer
11 reviewed project provided to the client by the Respondent is in compliance with Board
12 rules and statutes. Respondent shall not give final approval on any projects to a client,
13 contractor, any regulatory or review body or any other person until the project has been
14 reviewed and approved by the Peer Reviewer. Respondent shall retain the Peer Reviewer
15 at his own expense.

16 4. REMEDIAL TRAINING. Within Sixty (60) days of the effective date of this
17 Consent Agreement, Respondent shall submit a course(s) for Board pre-approval. Upon
18 approval, Respondent shall complete a course regarding Legal precedence and Boundary
19 controls and provide proof to the Board that he has successfully completed the course(s).

20 5. RESTITUTION. Within thirty (30) days from the effective date of this
21 Consent Agreement, Respondent shall pay restitution directly to the client, Charles
22 Siebenthal, in the amount of One Thousand Five Hundred Dollars (\$1,500.00) for the
23 cost of the Land Survey and Legal Descriptions in case P21-074. Respondent shall
24 provide proof to the Board of Technical Registration that payment was made directly to
25 the client.

26 6. ADMINISTRATIVE PENALTY. Within Six (6) months from the effective
27 date of this Consent Agreement, Respondent shall pay an administrative penalty of Two
28 Hundred and Fifty Dollars (\$2,000) by certified check or money order made payable to

1 the State of Arizona Board of Technical Registration.

2 7. COST OF INVESTIGATION. Within sixty (60) days from the effective date
3 of this Consent Agreement, Respondent shall pay the cost of investigation of this case to
4 the Board in the amount of One Thousand Five Hundred and Fifty Dollars (\$1,550.00) by
5 certified check or money order made payable to the State of Arizona Board of Technical
6 Registration, according to the provisions of A.R.S. § 32-128(H).

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

13 9. RENEWAL OF REGISTRATION. During the probationary period,
14 Respondent and Respondent Firm shall timely renew their Arizona registration as an
15 Land Surveyor and Land Surveying Firm, and timely pay all required registration fees.

16 10. EFFECTIVE DATE. The effective date of this Consent Agreement is the
17 date the Respondent and Board sign the Consent Agreement. If the dates are different, the
18 effective date is the later of the two dates.

19 11. COSTS OF COMPLIANCE. Respondent shall pay all costs associated with
20 complying with this Consent Agreement.

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

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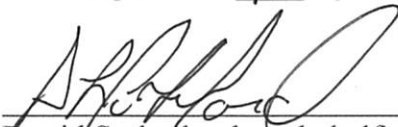
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1 ACCEPTED and ORDERED this 25 day of April, 2022.

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4 Jack Gilmore, L.A., Chairman
5 Arizona State Board of
6 Technical Registration

7 Consent Agreement and Order, No. P21-074 accepted this 11 day of
8 April, 2022.

9 
10 David Sutherland, on behalf of himself
11 and on behalf of SutherLand Survey,
12 LLC, Respondents

13 ORIGINAL filed this 25 day of
14 April, 2022, with:

15 Arizona State Board of Technical Registration
16 1110 W. Washington, Suite 240
17 Phoenix, AZ 85007

18 COPY of the foregoing mailed via Certified Mail
19 No. 9214 8901 9434 4600 0874 43 and
20 First Class mail this 25 day of April, 2022, to:

21 Jana Flagler
22 P.O. Box 569
23 Bisbee, AZ 85603
24 *Attorney for Respondent*

25 
26 By: _____
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