

# SURVEYOR

*California*

Fall 2011

Issue #167

## The California High Precision Geodetic Network

A 20 Year Retrospective

Article by Robert L. Nelson and Don D'Onofrio on page 12

## A Reflection on the San Diego County High Precision Geodetic Network and the Start of the Statewide HPGN Survey

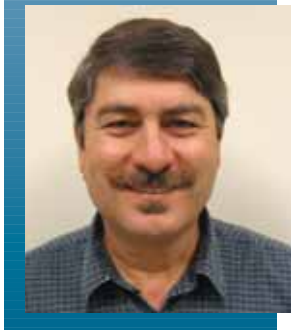
Article by Steven J. Martin, PLS on page 18

## Big Changes are Coming for the California PLS Exam

Interview with Ric Moore, PLS Executive Officer of BPELSG  
By John P. Wilusz's, PLS, PE on page 6

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By: Frank Romano, PLS

Frank Romano, Jr. obtained his CA license in 1990 and NV license in 1991. He is owner/operator of Frank Romano Surveying and has recorded over 100 Record of Surveys since 1993. He is currently employed by Caltrans, District 12, Irvine, CA, and is a former Adjunct Professor, Survey Program, Santiago Canyon College, Orange, CA.

# Simultaneous or Sequential Conveyance? One surveyor's quest for the answer

In the fall of 2007 I acquired a job wherein a five-acre desert parcel had been split by separate deeds in 1965. This survey brought up the question of "simultaneous vs. sequential conveyance." Can two parcels be created simultaneously by two separate deeds? More specifically, were the two parcels that I was tasked to survey created simultaneously by two separate deeds? What follows is an account of my quest for the answer.

Anyone who has surveyed for any length of time, especially in the desert, has come across deeds that look like they were written by a lawyer, realtor, or property owner, without the slightest understanding of the excess/deficiency nature of the Public Lands Survey System. Such was the case as I began to investigate the title history of my two parcels. The description of the two creating deeds in question clearly overlapped each other (see Fig. 1.) I was then tasked with determining which deed created the senior parcel. The created deed for Parcel "A" was found to be recorded in Book 6378, Page 214. The creating deed for Parcel "B" was recorded in Book 6378, Page 215. Problem solved! Page 214 comes before Page 215, therefore, Parcel "A" is senior to Parcel "B".

Wait a minute! Not so fast. What's this? Both deeds were executed on the same day by the same Grantor and recorded on the same day at the same time. Was it the owner's intent to convey them simultaneously? The deed for Parcel "A" was recorded on April 26, 1965 at 10:27AM. The deed for Parcel "B" was also recorded on April 26, 1965 at 10:27AM. The exact same date and time. Simultaneous conveyance? Now I began to have second thoughts. So I did what any self respecting surveyor would do, I reached over and pulled Brown's *Boundary Control and Legal Principles 4<sup>th</sup> Ed.* off of the shelf and turned to the section on *Locating Simultaneously Created Boundaries* in which he defines "A simultaneously created boundary results when several parcels of land are created in the same 'legal instant' by the same person, persons, or agency and by the same instrument."<sup>1</sup> *emphasis added.*

- Same legal instant? Check!
- Same person? Check!
- Same instrument? Negative!

Now I realize that his book is a book of legal principles based on court cases: State and Federal, some in California, and some in other parts of our country. So I looked for the references that he bases this statement on especially the "by the same instrument." To my surprise there are none. I searched and found none in any

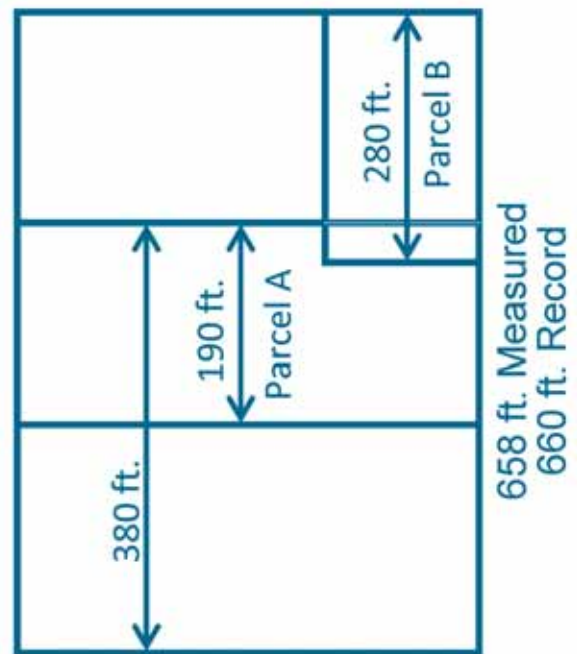


Fig. 1

of the many reference books in my library. It was then that I decided to solicit the aid of others.

My first step was to post the problem on the California Land Surveyors Association (CLSA) Forum, a blog for surveyors hosted by CLSA on their website: [www.californiasurveyors.org](http://www.californiasurveyors.org). I explained the problem and requested justification and references for any opinions expressed. I received several responses. One of

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the responses reasoned that “*the deed with the lower page number came first, unless the two deeds were recorded as the same instrument.*” and referenced Brown.<sup>1</sup> Another reasoned, “*Our state is a ‘recording state’*” meaning that higher credibility/status is given to the first recorded document. In this case, the first document to record achieved the vaulted status of a recorded deed *PRIOR* to the very next one on the page.” The remaining responses agreed with the two stated above.

Which took me to my next step, what does California law have to say about recording documents and specifically the *order of recording*? California Government Code Section 27320 states:

*When any instrument authorized by law to be recorded is deposited in the recorder's office for record, the recorder shall endorse upon it in the order in which it is deposited, the year, month, day, hour, and minute of its reception, and the amount of fees for recording. The recorder shall record it without delay, together with the acknowledgements, proofs, certificates, and prior recording data written upon or annexed to it, with the plats, surveys, schedules, and other papers thereto annexed, and shall note on the record its identification number, and the name of the person at whose request it is recorded. Efforts shall be made to assign identification numbers sequentially, but an assignment of a nonsequential number may be made if not in violation of express recording instructions regarding a group of concurrently recorded instruments and if, in the discretion of the county recorder, such assignment best serves the interest of expeditious recording.*

A reading of the above section of Code would indicate that the recording order is “...*the year, month, day, hour, and minute of its reception...*” and that the page numbering is “...*its identification number...*” and is used for index/retrieval purposes. The code specifically provides for “...*concurrently recorded instruments...*” as the same transaction.

Now for my final step, what about case law? Are there any court cases that would address this issue? With a little assistance from a friend and colleague, Tod Coleman, I was directed to the following case: *Soman Properties v. Rikuo Corp.* (1994)<sup>2</sup>. Although this case was not specifically about the order of recording documents, that question was a side issue. It was used to make the point that two documents were recorded at the same “*exact time*”<sup>2</sup> and that the consecutive sequencing of the assigned numbers indicated that the documents “...*were filed as part of the same transaction.*”<sup>2</sup> The case showed that the Court decided: 1) the “*year, month, day, hour and minute*”<sup>2</sup> determined that the documents were filed at the same “*exact time*”<sup>2</sup>; and 2) the assigned sequential indexing determined that they were part of the same transaction; Both consistent with CA Gov. Code Section 27320.

In light of said California Code and the Court’s interpretation, it would seem that Brown’s statement, “*A simultaneously created boundary results when several parcels of land are created in the same ‘legal instant’ by the same person, persons, or agency and by the same instrument.*”<sup>1</sup> should be revised for California to read “*A simultaneously created boundary results when several parcels of land are created in the same ‘legal instant’ by the same person, persons, or agency and by the same transaction.*” Emphasis added.

It was finally time to hang my hat. For the reasons stated in the following note, I accepted them as a simultaneous conveyance and placed the note on my map.

“BOOK 6378, PAGES 214 AND 215 O.R. WERE BOTH EXECUTED ON THE SAME DAY AND RECORDED ON THE SAME YEAR, MONTH, DAY, HOUR AND MINUTE. IT IS MY OPINION THAT THIS SHOWS THE GRANTOR’S INTENT TO CONVEY BOTH PROPERTIES AT THE SAME MOMENT IN TIME AND THAT THE TWO DEEDS WERE CONCURRENTLY RECORDED CREATING A SIMULTANEOUS CONVEYANCE OF THE TWO PARCELS. MY UNDERSTANDING OF CALIFORNIA GOVERNMENT CODE SECTION 27320 IS THAT TIME OF RECORDING, NOT THE INDEXING (OR PAGE NUMBERING), DETERMINES THE ORDER AND PRECEDENCE OF RECORDED DOCUMENTS.”<sup>3</sup>

The map was accepted by the County Surveyor and recorded.

You, on the other hand, may have a different opinion. If so, I would love to hear it. So pick up that pen and write to the editor. Do it now! And don’t forget to include your reasoning and references. I look forward to hearing from you!

*“For having lived long, I have experienced many instances of being obliged, by better information or fuller consideration, to change opinions, even on important subjects, which I once thought right but found to be otherwise.”*  
Benjamin Franklin

#### References:

1. “Boundary Control and Legal Principles” 4<sup>th</sup> Ed.; Brown, Robillard, and Wilson
2. *Soman Properties v. Rikuo Corp.* (1994) 24 Cal. App.4<sup>th</sup> 471, 29 Cal.Rptr.2d 427
3. Record of Survey 07-244, R.S.B. 133/90, San Bernardino County, CA ■

