



STATE OF WASHINGTON
**BOARD OF REGISTRATION FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

P.O. Box 9025, Olympia, WA 98507-9025

December 8, 2022

Department of Natural Resources
Engineering Division
1111 Washington St. SE – MS: 47030
Olympia, WA 98504-7030

Re: Recording Monument Replacements and Encroachments

Dear Mr. Beehler:

Thank you for requesting the input from the Board of Registration of Professional Engineers and Land Surveyors (BRPELS). In your letter, you have requested “*conclusive answers to questions*” regarding statutes under the jurisdiction of the Department of Natural Resources (DNR).

BRPELS will provide a response pursuant to its role as the regulatory authority over land surveyors under Chapter 18.43 RCW. BRPELS has disciplinary authority over licensed land surveyors. It does not have either the jurisdiction or authority to provide legal advice or direction to other agencies, including DNR.

This response CANNOT provide conclusive answers. Instead, it is intended to provide the Board’s perspective as an external stakeholder. It should not be relied on by DNR as legal authority, and the opinions expressed here should not be used as a basis for legal advice to private citizens.

Here is an excerpt from the DNR Letter containing your questions:

The particular questions at-hand concern whether certain circumstances trigger a requirement to file a Record of Survey (ROS) map. It appears that the relevant statutes guiding the land surveying profession are RCW 58.09.130, RCW 58.09.090 (1) (d) (iii), and RCW 58.24.040(8). We respectfully submit the following questions:

Question 1:

- 1) In the case of removal, or replacement, of a monument, not at a property corner, but marking a road centerline or right-of-way “reference line”:
 - a. Is it mandatory for a surveyor to file an ROS following the removal, or replacement, of a monument marking a road centerline, or right-of-way “reference line”?
 - b. If the filing of an ROS is not required, is some other form of public record required?
 - c. If other forms of public record are sufficient in lieu of filing an ROS, what are the other forms of public record?

Response to question 1a: Is it mandatory for a surveyor to file an ROS following the removal, or replacement, of a monument marking a road centerline, or right-of-way “reference line”?

It is our opinion that in general monuments, “*referencing*” a road centerline or right-of-way may be the best evidence as to the boundary of the actual road centerline or right-of-way, and although they may not be “*on the boundary of two or more ownerships*”, they are points or lines which define the exterior boundary or “*boundaries common to two or more ownerships*” and their reestablishment would require the recording of a survey in most cases. Alternatively, RCW 58.09.130, which addresses removal and replacement of monuments of roads and highways, does not expressly require a record of survey. From an enforcement perspective, this Board finds this law to be inapplicable to the question.

We note that the legislature, pursuant to RCW 58.24.010 and RCW 58.24.020, determined there was a necessity in the interest of the people of the state and the responsibility of the state to establish a system to provide a means for the identification and preservation of survey points [emphasis added] **for the description of common land boundaries and for the adoption and maintenance of a system of permanent reference as to boundary monuments.** We further recognize that under RCW 58.24.020, the Washington State Department of Natural Resources (DNR) is the agency for the establishment and maintenance of this system, which includes permitting the temporary removal or destruction of section corners, boundary markers, or monuments. Under this authority and RCW 58.24.030, the DNR prescribed regulations concerning the removal or destruction of survey monuments and the perpetuation of survey points.

RCW 58.24.040 (8): *Permit the temporary removal or destruction of any section corner or any other land boundary mark or monument by any person, corporation, association, department, or subdivision of the state, county, or municipality as may be necessary or desirable to accommodate construction, mining, and other development of any land: PROVIDED, That such section corner or other land boundary mark or monument shall be referenced to the Washington coordinate system by a registered professional engineer or land surveyor prior to such removal or destruction, and shall be replaced or a suitable reference monument established by a registered professional engineer or land surveyor within a reasonable time after completion of such construction, mining, or other development: AND PROVIDED FURTHER, That the department of natural resources shall adopt and promulgate reasonable rules and regulations under which the agency shall authorize such temporary removal or destruction and require the replacement of such section corner or other land boundary marks or monuments.*

Furthermore, we note that the definition under **WAC 332-120-020** defines land boundary survey corner as “**A point on the boundary of any easement, right of way, lot, tract, or parcel of real property; a controlling point for a plat; or a point which is a General Land Office or Bureau of Land Management survey corner.**”

Although this definition does not specifically include the words “**a monument, not at a property corner**” as stated in the questions, RCW 58.24.040 (8) gives authority to the DNR to regulate and authorize such temporary removal or destruction and requires the replacement of **other land boundary marks or monuments.** Since the DNR has the authority to regulate the temporary removal or destruction and the replacement of **other land boundary marks or monuments** when it becomes necessary or desirable to accommodate construction, mining, and other development of any land, it is our opinion that “**marking a road centerline or right-of-way “reference line”** falls under the definition of “**other land boundary marks or monuments.**”

With reference to the **APPLICATION AND PERMIT TO REMOVE OR DESTROY A SURVEY MONUMENT PER RCW 58.24.040(8) AND WAC 332-120-070** (Form prescribed 12/01/2021 by the Public Land Survey Office, Dept. of Natural Resources, pursuant to RCW 58.24.040 (8).) Chapter 58.09.040(1) RCW does not require a surveyor to record a survey since the monuments are on a reference line and not on the actual boundary of two or more ownerships. However, if the surveyor has filed an application to remove and replace the monuments, the surveyor would be required to record a survey along with the required completion report in order to comply with the requirements of the application.

It is worth noting that an Engineer is allowed to file an application to remove and replace the monuments under the provisions of the application itself; however, if an Engineer applies for and receives approval to remove and/or replace a monument pursuant to Chapter(s) 332-120-050 and 332-120-060 WAC, they would be unable to comply with the recording requirement because they do **NOT** have the proper credentials to record the survey pursuant to RCW 18.43, regardless if they work for a public agency or not.

WAC 332-120-050 Application process. (1) *Whenever a survey monument needs to be removed or destroyed the application required by this chapter shall be submitted to the department. It shall be completed, signed, and sealed by a land surveyor or engineer as defined in this chapter.*

WAC 332-120-060 Project completion—Perpetuation of the original position. (1) *After completion of the activity that caused the removal or destruction of the monument, a land surveyor or engineer shall, unless specifically authorized otherwise:*
(4) *A record of survey or land corner record shall be completed as required by the Survey Recording Act to document the remonumentation in the public record.*

Chapter 58.09.040 Records of survey—Contents—Filing—Replacing corner, filing record. (1) *It shall be mandatory, within ninety days after the establishment, reestablishment, or restoration of a corner on the boundary of two or more ownerships or general land office corner by survey that a land surveyor shall file with the county auditor in the county or counties wherein the lands surveyed are situated a record of such survey, in such form as to meet the requirements of this chapter, which through accepted survey procedures, shall disclose: (a) The establishment of a corner which materially varies from the description of record; (b) The establishment of one or more property corners not previously existing; (c) Evidence that reasonable analysis might result in alternate positions of lines or points as a result of an ambiguity in the description; (d) The reestablishment of lost government land office corners.*

Response to question 1b and 1c: In the case of removal, or replacement, of a monument, not at a property corner, but marking a road centerline or right-of-way “reference line”: (b) If the filing of an ROS is not required, is some other form of public record required? (c) If other forms of public record are sufficient in lieu of filing an ROS, what are the other forms of public record?

It is our opinion that generally when the surveyor is a public officer acting in his or her official capacity, they would be exempt from recording a survey as long as a reproducible copy of the map has been filed with the county engineer of the county in which the land is located. In such a case, the reproducible copy of the map is a public record.

Chapter 58.09.090 RCW (1)(a) states: *A record of survey is not required of any survey when it has been made by a public officer in his or her official capacity and a reproducible copy thereof has been filed with the county engineer of the county in which the land is located. A map so filed shall be indexed and kept available for public inspection. A record of survey shall not be required of a survey made by the United States bureau of land management. A state agency conducting surveys to carry out the program of the agency shall not be required to use a land surveyor as defined by this chapter;*

Aside from filing a Record of Survey, other forms of public record may be required.

Question 2:

2) The second case concerns a scenario in which apparent encroachments exist on either one or both sides of a surveyed boundary line.

a. Is it mandatory for a surveyor to file an ROS if existing boundary corner monuments are found and accepted, and apparent encroachments exist on either one or both sides of a surveyed boundary line?

b. Is it mandatory for a surveyor to file an ROS if boundary corner monuments are NOT found, NOT set, and/or NOT re-set, but the property line has been determined, and apparent encroachments exist on one or both sides of a surveyed boundary line?

Response to question 2a: Is it mandatory for a surveyor to file an ROS if existing boundary corner monuments are found and accepted, and apparent encroachments exist on either one or both sides of a surveyed boundary line?

The term “encroachment” appears once in Chapter 58.09 RCW, and that is in relation to surveyed subdivisions:

RCW 58.09.090 When record of survey not required. (1) A record of survey is not required of any survey:

(d) When it is a retracement or resurvey of boundaries of platted lots, tracts, or parcels shown on a filed or recorded and surveyed subdivision plat or filed or recorded and surveyed short subdivision plat in which monuments have been set to mark all corners of the block or street centerline intersections, provided that no discrepancy is found.

For purposes of this exemption, the term discrepancy shall include:

(iii) The presence of any physical evidence of encroachment or overlap by occupation or improvement;

It is our opinion that the requirement to record a survey when “***the presence of any physical evidence of encroachment or overlap by occupation or improvement is found***” applies to retracements or the resurvey of ***platted lots, tracts, or parcels*** shown on a filed or recorded and surveyed subdivision plat or filed or recorded and surveyed short subdivision plat (platted lots) in which monuments have been set to mark all corners of the block or street centerline intersections. This requirement to record does not appear to apply to retracements or resurveys of parcels shown on a recorded survey that was recorded pursuant to RCW 58.09 in general. This opinion is further supported by WAC 196-29-110(4).

RCW 58.09.020(3)"Survey" shall mean the locating and **monumenting** in accordance with sound principles of land surveying by or under the supervision of a licensed land surveyor, of points or lines which define the exterior boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners.

WAC 196-29-110 Land surveying practice standards - Failure by any registrant to comply with the provisions of the Survey Recording Act, chapter 58.09 RCW and the survey standards, chapter 332-130 WAC shall be considered misconduct or malpractice as defined by RCW 18.43.105(11). The following standards shall also apply:

- (1) The monumentation, posting, and/or the marking of a boundary line between two existing corner monuments constitutes the "practice of land surveying" as defined in chapter 18.43 RCW and chapter 196-16 WAC, and consequently requires said work to be performed under the direct supervision of a registered professional land surveyor.
- (2) The field survey work performed to accomplish the monumentation, posting, and marking of a boundary line between two existing corner monuments shall meet the minimum standards imposed by chapter 332-130 WAC.
- (3) The monumentation, posting, and/or marking of a boundary line between two existing corner monuments involves a determination of the accuracy and validity of the existing monuments by the use of standard survey methods and professional judgment.
- (4) The monumentation, posting, and marking of a boundary line between two existing corner monuments shall require the filing of a record of survey according to chapter 58.09 RCW unless both corners satisfy one or both of the following requirements:
 - (a) The corner(s) are shown as being established on a properly recorded or filed survey according to chapter 58.09 RCW and are accurately and correctly shown thereon.
 - (b) The corner(s) are described correctly, accurately, and properly on a land corner record according to chapter 58.09 RCW if their establishment was by a method not requiring the filing of a record of survey.

The above law does not specify if the presence of any physical evidence of encroachment or overlap by occupation or improvement need exist on either one or both sides of a surveyed boundary line of platted lots.

Furthermore, the presence of any physical evidence of encroachment or overlap by occupation or improvement is the trigger to record, not its position relative to one side of the boundary line or other RCW 58.09.090(1)(d)(iii). WAC 196-29-110 also requires a survey to be recorded if the corners being established are not accurately and correctly shown on a properly recorded survey or a Land Corner Record. It does not mention a requirement that a survey be recorded if existing boundary corner monuments are found and accepted, and evidence of encroachments exist on either one or both sides of a surveyed boundary line of platted lots.

Response to question 2b: Is it mandatory for a surveyor to file an ROS if boundary corner monuments are NOT found, NOT set, and/or NOT re-set, but the property line has been determined, and apparent encroachments exist on one or both sides of a surveyed boundary line?

It is our opinion that the establishment, reestablishment, or restoration of a corner on the boundary of two or more ownerships or general land office corner **by survey and monumenting** triggers the requirement for recording. If boundary corner monuments are NOT found, NOT set, and/or NOT re-set by the surveyor, but the surveyor has determined the property line, and evidence of encroachments exist on one or both sides of a surveyed boundary line, a Record of survey is not required to be recorded under this chapter.

Chapter 58.09.020 RCW defines survey as: “The **locating and monumenting** in accordance with sound principles of land surveying by or under the supervision of a licensed land surveyor, **of points or lines which define** the exterior boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners.”

Chapter 58.09.040(1) RCW states: “It shall be mandatory, within ninety days after the establishment, reestablishment, or restoration **of a corner on the boundary of two or more ownerships** or general land office corner **by survey** that a land surveyor shall file with the county auditor in the county or counties wherein the lands surveyed are situated a record of such survey, in such form as to meet the requirements of this chapter.”

Lastly, we found that Attorney General Opinion (AGO) 1989 No. 1 also applies when responding to these questions. The footnotes contained therein relate to the **difference between a corner and a monument**; which should be also considered when applying this opinion:

AGO 1989 No. 1 states:

1. *RCW 58.09.040(1)(a) through (d) do not constitute an exclusive list of the surveys required by law to be filed.*
2. *The Survey Recording Act (Chapter 58.09 RCW) does not require the filing of a record of survey subsequent to the physical location of a boundary line between two existing corner monuments.*
3. *The Survey Recording Act (Chapter 58.09 RCW) requires the filing of a record of survey subsequent to the reestablishment of a corner position previously recorded in the county under a local law or ordinance; it does not matter whether the corner had previously been monumented.*

We note that Item 2 in this reference was originally adopted under WAC 196-24-110 in 1987 and later promulgation, see WAC 196-29-110. See said chapter for instances when a survey is required to be recorded.

We also note that Item 3 in this reference is no longer applicable due to the change in the Survey Recording Act in 1992 which added section (d) expanding the list of surveys not required to be recorded (with certain exceptions) to included retracements of platted recorded in the county under a local law or ordinance.

Again, thank you for seeking input from BRPELS on the questions posed by DNR and the Land Survey Advisory Board. As stated above, the Board does not have the jurisdiction or authority to provide legal

interpretations, legal opinions, or legal advice to DNR or the Advisory Board, and this letter should not be considered or conveyed to others as such.

Yours Truly,

A handwritten signature in black ink, appearing to read "Doug Hendrickson". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Doug Hendrickson, PE
Board Chair