STATE OF IDAHO

BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

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Dear Professional Land Surveyor or authorized firm manager:

The Board of Licensure of Professional Engineers and Professional Land Surveyors (IBPELS) pursued one agency bill during the 2020 session of the legislature. The bill was signed into law and will become effective on July 1, 2020. The Governor also required the Board to condense their administrative rules. The rule language has been simplified and chapter numbers changed. The administrative rules were not reauthorized by the legislature during the 2020 session but have been adopted as temporary and are in force.

I had hoped to travel the State to discuss the new laws, rules and out-year proposals with licensees before they went into effect. The Covid 19 pandemic put those plans on hold. I will work with interested sections or groups of licensees who are interested in holding virtual meetings.

The intent of this letter is to provide an overview of new processes and requirements, and relay what the Board expects moving forward. There are also comments related to compliance with existing laws and rules.

SENATE BILL 1261 (effective July 1, 2020):

HOUSEKEEPING CHANGES

1. **REMOVAL OF LANGUAGE TO VOTE TO REINSTATE A LICENSE:**

In 2015 the Legislature amended Idaho Code to increase the number of board members from five to seven. The language requiring three yes votes to reinstate a license was left unchanged. Rather than update that obsolete language, the law has been amended to remove it. The normal rules of administrative procedure will now apply. Reinstatements require a simple majority, the same as any other motion.

2. **REPEAL OF OUTDATED DAMAGE PROVISIONS**:

Idaho Code 54-1230 was amended during the 2019 session. This changed "Public Surveying – Right of Entry" to "Surveying – Right of Entry". The related damage provisions (54-1231 through 54-1233) were no longer compatible with other laws and have now been repealed. Damages caused by surveyors are recovered in the same manner as other damages.

3. **DEFINITIONS**: Two definitions were added

a. **Professional Boundary Land Survey:** This term will be used to delineate those services that are the exclusive domain of Professional Surveyors. The definition reads as follows:

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55-1202(9) "Professional boundary land survey" means land surveying services performed by a land surveyor licensed by this chapter and includes establishing, reestablishing, marking, or locating the corners or lines of:
(a) Property boundaries;
(b) The public land survey system;
(c) Rights-of-way;
(d) Easements;
(e) Lease areas; or
(f) Other interests in real property.

b. **Survey Monuments Used as Control:** This definition was added to clarify what constitutes a controlling monument. The immediate impact is a better definition of which monuments require perpetuation under Title 55, Chapter 13 Idaho Code. When corners originally monumented by the General Land Office or BLM control on your survey they must have a corner record. These monuments must also be recovered or remonumented in accordance with 55-1608 Idaho Code. This definition may be used in future changes to laws related to plats and surveys. The definition reads as follows:

54-1202 (20): "Survey monuments used as control" means any monument marking, referencing, or used as a witness for a line or corner in any professional boundary land survey as defined in subsection 9 of this section.

4. **CLARIFICATION REGARDING RETIRED LICENSEES:**

This change clarifies that practice on a retired license is not allowed.

5. ELIMINATE SEAL REQUIREMENT FOR FACULTY LICENSEES:

Faculty restricted professional engineers are limited to university work (which does not need a seal). The law was amended so Faculty engineers are not required to obtain a seal.

6. **REMOVAL OF RENEWAL NOTICE REQUIREMENTS:**

This amendment simplifies language related to renewals. It also clarifies that licensees and business entities are responsible to renew their license or certificate prior to expiration. The Board has migrated to electronic (e-mail) notification of license expiration. All renewals are now on-line. You can use the renewal portal at any time to update your contact information. The Board cannot relay information to you effectively without a current e-mail, phone number and address. If board staff attempts to contact you with a request for information or CPD audit, outdated contact info may result in discipline for failure to respond.

7. **CLARIFICATION THAT CERTIFICATE HOLDERS ARE UNDER THE JURISDICTION OF THE BOARD:**

This amendment clarifies that interns and holders of a certificate of authority (business entities) are under the Board's jurisdiction and must abide by applicable laws and rules. Interns need to understand they are required to conduct themselves in accordance with the Rules of Professional Responsibility. Business owners and managers are reminded that work performed under a COA is the responsibility of both the firm and the licensee. This is true even after the licensee leaves employment.

8. REMOVE OUTDATED LANGUAGE FROM CORNER RECORD LAW:

The Corner Perpetuation and Filing Act established fees for the recording of corner records. The Act included a provision to waive those fees for the first six months it was in force. The language no longer serves a purpose and has been eliminated.

Substantive Changes Related to Monuments

1. **ADDITIONAL OPTIONS FOR MONUMENTS**:

Under the previous wording of 54-1227, surveyors were limited to setting 1/2-inch or 5/8-inch diameter iron or steel rods unless circumstances precluded their use. This amendment allows the use of posts or pipes one inch and larger at least two feet long. The wall thickness on the pipe must be at least a nominal 1/18 inch.

The new law also allows the surveyor to use more substantial products designed for use as monuments. The intention is to give surveyors latitude in the selection of monuments without opening the door for substandard marks. Surveyors are still allowed to use alternative monuments when circumstances preclude the use of standard monuments.

The language of 54-1227 has been amended to require ***all*** set monuments to be stable, permanent, magnetically detectable and marked with the license number of the surveyor placing the monument. The term "permanent" means not intended or designed to be temporary. PK and Mag nails are temporary and do not comply.

During investigations I have found recently set rebar propped up by or leaning against loose rocks. The language "permanent and reliable, magnetically monuments" should have made it clear this was not acceptable. The new language leaves no doubt.

When a surveyor finds a non-magnetically detectable monument, they must now remonument the corner position. This is no longer limited to PLSS corners. The practice of setting a metal memorial next to the monument does not comply. The *corner position* must be remonumented.

Witness corners and reference monuments are commonly used where a corner position is inaccessible or impractical to monument. In these situations, surveyors must now mark the cap on the monument as a witness or reference.

The amended language of 54-1227 reads as follows:

> 54-1227. SURVEYS – AUTHORITY AND DUTIES OF PROFESSIONAL LAND SURVEYORS AND PROFESSIONAL ENGINEERS.
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> (1) Every licensed professional land surveyor is hereby authorized to make land surveys and it shall be the duty of each licensed professional land surveyor, whenever making and professional boundary land survey as defined in section 54-1202, Idaho Code, that is not preliminary in nature, to set permanent and reliable magnetically detectable monuments at all unmonumented corners field located, the minimum size of which shall be one-half (1/2) inch in least dimension and two (2) feet long iron or steel rod ~~unless special circumstances preclude the use of such monument; and such monuments must be permanently marked with the license number of the professional land surveyor responsible for placing the monument. Professional engineers qualified and duly licensed pursuant to this chapter may also perform those nonboundary surveys necessary and incidental to the work customarily performed by them.~~ , or a metallic post or pipe one (1) inch in least dimension and two (2) feet long with minimum wall thickness of nominal one-eighth (1/8) inch,, or other more substantial monuments designed specifically for use as a survey monument. Such monuments must be substantially in the ground, stable, and permanently marked with the license number of the professional land surveyor responsible for placing the monument.
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> (2) Where special circumstances preclude the use of such monuments, the professional land surveyor must place an alternate, stable, permanent monument that is magnetically detectable and marked with the license number of the professional land surveyor placing the monument.
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> (3) Where the corner position cannot be monumented due to special circumstances, the professional land surveyor must establish reference monuments or a witness corner and mark them as such.
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> (4) Any found nonmagnetically detectable monument must be remonumented with a magnetically detectable monument compliant with subsections (1) through (3) of this section.

2. CLARIFICIATION OF DUTIES AND AUTHORITIES OF ENGINEERS:

54-1227 Idaho Code limits surveying activities by professional engineers to non-boundary survey work. The language now also clearly states this work cannot be offered as a standalone service.

(5) Professional engineers qualified and duly licensed pursuant to this chapter may also perform those other surveys necessary and incidental *to their work.*

3. **CLARIFICATION AND REDUCTION IN REQUIREMENTS:**

55-1604 Idaho Code requires a corner record for all monuments set by the General Land Office or BLM. The law has been amended to eliminate the requirement for most lot corners in a townsite. Only exterior angle points or block corners set in the original townsite survey still require a corner record. All other PLSS monuments must be perpetuated in accordance with title 55, chapter 16. This change is accomplished by amending the definition of a Public Land Survey Corner. The new definition reads:

> 55-1603 DEFINITIONS. Except where the context indicates a different meaning, terms used in this chapter shall be defined as follows:
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> (11) "Public land survey corner" means any point actually established and monumented in an original survey or resurvey that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the U. S. general land office (GLO) and the U. S. Department of the interior, bureau of land management. This excludes GLO-surveyed townsite lot corners, except those marking exterior angle points or block corners within the townsite.

4. **CENTER QUARTER CORNER;**

The record of survey law in Idaho came approximately 100 years after the bulk of General Land Office surveys were completed. During that time a great deal of land was patented requiring most sections to be subdivided. County surveyors, private surveyors and even landowners were attempting to mark the limits of the land they were purchasing. Maps weren't always drawn. Those that were often went into a drawer never to be seen again.

Modern surveyors are tasked with surveying and subdividing these sections. The first interior corner location that must be determined is the center of section or 'center quarter corner'. Not all surveyors look for or set a monument at this location. This results in missed evidence and leaves the location uncertain. Every owner in the section having a survey done pays to repeat the work of establishing the center of section. Over time evidence of prior establishment degrades or is lost.

This amendment requires any surveyor subdividing a section to find or set the center quarter corner monument. The surveyor will also be required to record a corner record

memorializing the evidence and history of the corner. This should better preserve evidence and lend stability to the property boundaries.

There were two questions related to the new law that came up often during scoping. The first is, what is required when an owner owns the whole section, or when the subdivision lines of the section do not control? The language is explicit and is tied to "subdividing the section". If the section is in one ownership and is not being subdivided, the center quarter does not have to be established. The same is true where a parcel not controlled by the interior subdivision lines is being surveyed. The second question is what should be done when the center of section is occupied by a pivot or other improvement. The answer would be the same as any other monument requiring a corner record. If the true position cannot be monumented, a witness corner or reference monuments must be used.

The amended language of 55-1604 reads:

> 55-1604. FILING REQUIREMENTS. A professional land surveyor shall complete, sign, and file with the county clerk and recorder of the county where the corner is situated, a written record of the establishment, reestablishment, or rehabilitation of a corner monument and its accessories. This record shall be known as a "corner record" and such a filing shall be made for every public land survey corner, center one-quarter (1/4) corner, and accessory to such corner which is established, reestablished, monumented, remonumented, rehabilitated, perpetuated or used as control in any survey. The survey information shall be filed within ninety (90) days after the survey is completed, unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this chapter.
> In lieu of filing as heretofore provided, corner records may be recorded electronically in those counties which have such facilities.

5. ADDITIONAL OPTIONS FOR PLSS MONUMENTS; OFF-LINE CLOSING CORNERS:

Under previous statute and policy, surveyors were required to upgrade non-conforming monuments when a corner record was required for the corner. If the monument did not meet 54-1227 (including a cap stamped per the manual) it had to be remonumented. The law has been changed to allow some monuments to remain. For a found PLSS monument to remain it must be stable, permanent, substantial, magnetically detectable and uniquely identifiable. A rebar leaning against a rock is not acceptable. PK, Mag and other concrete nails are not acceptable. A loose boat spike in broken asphalt needs to be remonumented, but that same spike in solid concrete may be fine, especially if it has a good pedigree. This change is intended to allow monuments meeting all the qualities listed to remain. It is not intended to help surveyors avoid replacing substandard or precariously situated monuments.

When the monument and accessories are not substantially as shown on the most recent corner record, a new corner record is required. The language of the law is clear. Both the monument and accessories must be substantially the same, and they must show on the most recent corner record. This requirement was negotiated when the corner record law was last changed. The law now also requires the surveyor to recover or establish a minimum of three accessories for any new corner record. If accessories cannot be employed, you will have to document the reason why on the form.

When the position of a PLSS corner cannot be monumented, you will be required to set a witness corner or reference monuments. They will need to be marked in accordance with the Manual, including the proper designation of WC or RM. An explanation of the circumstances will need to be given on the corner record, survey and plat. For the map, a simple note such as "falls in river", or "in travel lane of highway" will suffice. Remember; these maps are not just for surveyors to follow. They are also used by owners. A simple note may prevent a costly misunderstanding.

Most surveyors are familiar with the term "closing corner". We see them on General Land Office plats all the time, most often on the northern and western tier of sections where the subdivision lines "close" against the previously established township lines. They were also employed in completion surveys or where the GLO or BLM surveyed up against existing lines such as reservations, claims or other entities. The general rule is they only control for the direction of and proportional distances along the line being surveyed. The terminus of the junior line will be where it intersects the previously surveyed or 'senior' line. As with most principles of surveying there are numerous exceptions. Sections 41 through 49 in chapter 7 of the 2009 Manual of Instructions describe the various situations you might encounter and how they affect the identity of a given monument.

Where a senior line has been faithfully retraced in an official survey, the monuments previously established as "closing corners" may in fact have been accepted and become controlling for the senior line. It is not enough to look at the designation on the original survey plat. The surveyor must research the record to determine if any officially accepted government resurvey has been performed. The status of the corner in that last survey will determine if it remains a closing corner. Making a correct determination of the identity of a corner requires the surveyor to know the complete history and read the notes of the last accepted official survey with care.

There are also cases where a closing corner was established very close to the nearest adjacent corner and it falls on the senior line. The surveyor should consider the quality of their own measurements before declaring these corners off-line by an amount they cannot or did not measure.

For corners established as closing corners that were not resurveyed *and* are found to be off the senior line, the surveyor is now required to monument the terminus of the junior line at the senior line and file a corner record. When the closing corner

monument is recovered it must be remonumented or remarked as an amended monument. If the monument controls the limits of federal interest land contact the pertinent office of the BLM prior to disturbing any original evidence.
Corner records must include a description of any evidence recovered or established relating to the true corner monument, the amended monument, or accessories. One corner record showing both monuments will suffice. The amended monument may be used as one of the accessories for the true corner monument.

The text of 55-1608 now reads:

> 55-1608. PROFESSIONAL LAND SURVEYOR TO ESTABLISH OR REHABILITATE MONUMENTS. (1) In every case where a corner record of a survey corner is required to be filed or recorded under the provisions of this chapter, the professional land surveyor must rehabilitate or remonument any corner in accordance with subsection (2) of this section. Where the corner position is monumented with a stable, permanent, substantial, accessible, magnetically detectable, and uniquely identifiable monument, a new monument will not be required. The professional land surveyor must also recover, establish, or rehabilitate a minimum of three (3) accessories to such corner where practicable. Where the professional land surveyor determines accessories are impracticable, an explanation shall be included on the corner record.
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> (2) Any monument set shall conform to the provisions of section 54-1227, Idaho Code, and shall be surmounted with a cap of such material and size that can be permanently and legibly marked as prescribed by the manual of surveying instructions issued by the United States department of the interior, bureau of land management, including the license number of the professional land surveyor responsible for placing the monument. Monuments shall be marked such that measurements between them may be made to the nearest one-tenth (0.1) foot. If the monument is set by a public officer, it shall be marked by an appropriate official designation. Where it is impracticable to monument a corner due to situations beyond the professional land surveyor's control, reference points or a witness corner shall be recovered or established. The professional land surveyor must also document the reason the monument cannot be set, the method of establishing the corner location, and the presence of any found or set reference point or witness corner on their corner record and record of survey or plat.
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> (3) Where closing corners which are not on or controlling for the line closed upon were set in any government survey authorized by the congress of the United States and the true point of intersection of the pertinent lines is controlling in a survey, resurvey, or subdivision of a section, the true point of intersection shall be monumented with a monument conforming to subsection (2) of this section. Any professional land surveyor establishing such a monument shall prepare and file a corner record for the true point of intersection monument, including any evidence related to and the pedigree of the original closing corner. If found, the original closing corner monument position must be remonumented as an amended monument in accordance with subsection (2) of this section.

HOUSE BILL 529 (effective July 1, 2020):

Another bill with an impact on the allied professions of architects and professional engineers passed during the 2020 session. House bill 529 provides immunity from some liability for services rendered in response to a declared emergency. It is important to note there is no immunity from liability for injury, death or damage resulting from a failure to meet the standard of care.

FOLLOW-UP ON LAWS FROM THE 2019 SESSION (effective July 1, 2019):

1. NARRATIVE:

Compliance checks have shown that most surveyors are doing well with the narrative requirement passed last year. There is room for improvement in some cases. The most overlooked item is the monuments and deeds relied on for the boundary resolution.

2. RIGHT OF ENTRY:

The Board has had two formal complaints related to right-of-entry. In both instances field crews entered adjoining properties without providing any form of notice. Ignoring the notice provision may result in civil or criminal penalties. If things escalate it can endanger the crew or result in the loss of the right-of-entry for our profession.

The Board has expressed that we are past the education period for both the narrative and right-of-entry.

OUTYEAR PROPOSAL:

The Board will pursue one bill in the 2021 session. This will be a rewrite of Title 55, Chapter 17 Coordinate System of Land description. The amended language will integrate the new datums and projections being developed by the NGS and modernize the laws on use of state plane coordinates. The proposed language has been transmitted to ISPLS, the GIS community, numerous State agencies and other stakeholders.

Please contact me at tom.judge@ipels.idaho.gov, or at (208) 373-7210 if you have questions regarding this letter. Your input is appreciated.

Respectfully,

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