

Idaho Board of Licensure of Professional Engineers And Professional Land Surveyors

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NEWS BULLETIN

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INTRODUCTION

This NEWS BULLETIN is distributed a minimum of twice per year by the Idaho State Board of Licensure of Professional Engineers and Professional Land Surveyors to inform the public and the State's Professional Engineers and Professional Land Surveyors of those events which significantly affect the professions.

GARY L. YOUNG, P.E./L.S. RETIRES FROM BOARD

After serving ten years, Gary L. Young is retiring from the Board. Originally appointed to a 5-year term by Governor Dirk Kempthorne and reappointed to a second 5-year term by Governor James Risch, Young has been a valuable and active member of the Board. Young retired from the position of City Engineer for the City of Twin Falls after more than 30 years service and he continues to live in Twin Falls with his wife, Elly, and their cats. As a Board Member he was instrumental in drafting and vetting the recent changes to the statutes relating to the practice of land surveying as well as reviewing and writing items for the State Specific Land Surveying Examination. His even-handed and quiet manner of dealing with issues will be missed.

GOVERNOR APPOINTS JOHN ELLE, P.E., P.L.S. TO BOARD

Governor C.L. "Butch" Otter has appointed John T. Elle of Pocatello to a 5-year term on the Board. Elle is a University of Idaho graduate and is licensed, by examination, as both a professional engineer and professional land surveyor. He is president of A&E Engineering, Inc. in Pocatello. He has been active in professional society activities for the last thirty years and is well prepared to assume the responsibilities of being a member of the Board. We welcome him and both appreciate and look forward to his continuing contributions to the professions.

LEGISLATURE APPROVES ADMINISTRATIVE RULE AMENDMENTS

The 2012 Session of the Idaho Legislature approved the amendments to the Administrative Rules which the Board proposed. The changes to the Rules of Procedure included (1) dropping the requirement that an applicant for assignment to the examination in structural engineering first be licensed in a base discipline and have an additional two years of experience, and (2) allowing the details of an investigation to be shared with law enforcement agencies, or with other licensing agencies after all adjudication is finalized. The changes to the Rules of Professional Responsibility included the addition of a requirement that licensee be prompt in statements and written responses to the Board. The changes went into effect on April 7, 2011, the day the Legislature adjourned.

SURVEYING LAW CHANGES GO INTO EFFECT JULY 1, 2011

Following a two year effort by the Board and the major stakeholders, House Bill No. 132 passed the Idaho State Legislature. This legislation accomplished several objectives including (1) consistent definitions of terms in five chapters of Idaho Code that relate to surveying; (2) requiring professional land surveyors to monument corners when they perform a land survey and to record the survey if certain conditions are met; (3) requiring perpetuation of original evidence of the location of a public land survey corner with monumentation meeting current statutory requirements; (4) allowing the setting of witness corners or reference points in lieu of reestablishing the original monument at its original location after it has been disturbed by construction; (5) continuing to protect property controlling corners and accessories to corners, and to add the requirement to protect points set in control surveys and benchmarks; (6) clarifying the survey requirements of a highway right-of-way plat; and (7) clarifying the requirement that surveys be conducted to a predetermined minimum accuracy. House Bill No. 132 is available at <http://www.legislature.idaho.gov/legislation/2011/H0132.htm>

LEGISLATIVE AUDITOR COMPLETES REPORT ON BOARD FINANCES

Approximately every three years the Legislative Auditor conducts an audit of the Board finances. The report for Fiscal Years 2008, 2009, and 2010 found no material issues and is available at <http://legislature.idaho.gov/audit/summaries/2010/profengr0810.pdf>

DEQ CHANGES PROCEDURES IN SILVER VALLEY TO PRESERVE MONUMENTS

Following an expression of concern from a license holder, the Board contacted the Department of Environmental Quality (DEQ) regarding the destruction of land survey monuments in conjunction with lead contamination mitigation measures being taken in the Silver Valley of Northern Idaho. DEQ initiated a pilot program using the requirements of Idaho Code Section 55-1613. The pilot program was successful and DEQ has now incorporated it into their contracts for the mitigation work. The Board thanked DEQ for their cooperation and assistance and for the responsive manner in which they addressed the concerns.

BOARD TO BEGIN AUDITING ENGINEERS FOR CPD COMPLIANCE

Mandatory Continuing Professional Development (CPD) for professional engineers went into effect by Administrative Rule on May 8, 2009. Licensees were exempt from the requirement from the effective date of the Administrative Rule to the time of their next renewal. Since two years have now passed since the imposition of the requirement, the first audits of individuals are underway. The Board has directed that five percent of the licenses be selected at random for audit. The Board urges all licensees to keep their CPD Logs and Attendance Verifications current so that if they are audited the process can be as orderly and simple as possible. The Administrative Rules for CPD can be found at <http://adm.idaho.gov/adminrules/rules/idapa10/0104.pdf>

BOARD ADOPTS POLICY ON 16-HOUR STRUCTURAL EXAMINATION

The Board needed to establish a policy regarding failures of the two components of the new 16-hour Structural Engineering exam which NCEES will begin administering April 2011. Candidates must receive a passing grade on each of the two 8-hour components of the exam in order to receive a pass on the overall exam. The two components may be taken in any order. Upon a second failure of an exam, Idaho law requires the candidate obtain an additional year of experience and 8 college level credits. Upon a third failure, Idaho law requires the candidate obtain an additional three years of experience and 12 college level credits. The Board voted to allow an applicant to receive a non-passing grade on either module more than twice without requiring additional education or experience, but the first time they have not received a passing grade on the entire exam twice, they will be required to obtain an additional year of experience and 8 credits. After they have not received a passing grade on the entire exam three or more times, they will be required to obtain an additional 3 years of experience and 12 credits. The entire exam must be passed within a five-year time period after passage of the first module.

PROPOSED CHANGES TO ADMINISTRATIVE RULES

Board staff conducted a public meeting on May 11 to present possible changes to the Boards Administrative Rules. The Board has considered the comments received in that meeting and have promulgated Proposed Rules for consideration. Changes to the Rules of Procedure include (1) eliminate the need for engineer intern and land surveyor intern applicants to provide references on their examination application, (2) adopt national standards for the evaluation of non-accredited engineering programs, (3) allow individuals to select retired status during the renewal biennium in which they reach the age of 60 rather than waiting until their 60th birthday, and (4) amend the examination submittal deadlines to accommodate converting some examinations to computer-based format.

Changes to the Rules of Professional Responsibility include (1) reduce from 60 to 20 the number of days which a license holder has to respond to notification of discovery of a material discrepancy by another license holder, (2) provide for an exception to the rule requiring license holders to notify other license holders of the discovery of material discrepancy if the licensee is working in the employ of an attorney as an expert witness, and (3) establish a limitation on the amount of time that can pass following discovery of an event for the Board to accept an affidavit of complaint.

Changes to the Rules of Continuing Professional Development include (1) allow newly licensed persons to carry forward professional development hours earned during the biennium prior to the first renewal following the issuance of the license, (2) allow professional development hours for peer review of published articles, and (3) allow license holders who are residing outside the United States to earn the required professional development hours upon return to the United States.

Public Hearings are tentatively scheduled for Wednesday, July 13, 2011 at the Board office to discuss the Proposed Rules. The detailed "strike-and-underscore" changes will be available on the internet in the July Bulletin through the Department of Administration Administrative Bulletin publication at <http://adm.idaho.gov/adminrules/bulletin/mstrtoc.htm>

PROPOSED CHANGES TO STATUTES

The Board is considering several possible amendments to various statutes and would appreciate hearing comments on them. The possible amendments would be prepared in final form in the summer of 2011 for consideration by the 2012 session of the Idaho Legislature. The draft language of the amendments is presented below along with a rationale for the amendment in *italics*.

DRAFT AMENDMENTS TO TITLE 54, CHAPTER 12, IDAHO CODE TO ASSIGN ONLY IDAHO RESIDENTS, FULL-TIME IDAHO EMPLOYEES, OR STUDENTS AT IDAHO COLLEGES OR UNIVERSITIES TO EXAMINATIONS FOR INITIAL CERTIFICATION OR LICENSURE

Rationale: The Board has experienced an increase in the number of inquiries from individuals who, for a number of reasons, cannot be assigned to examinations in their jurisdiction of residence. These individuals do not appear to have any intention of practicing in Idaho, and appear to intend to use the professional title in the other jurisdiction if they are assigned to the exam in Idaho and pass. Limiting those eligible for assignment to the examination will eliminate this problem. (Editorial Note: In the event this legislation passes, the Board would need to promulgate a rule amendment to eliminate IDAPA 10.01.01.016.04 in its entirety.)

54-1212. GENERAL REQUIREMENTS FOR EXAMINATION AND LICENSE. Except as herein otherwise expressly provided, no license as a professional engineer or professional land surveyor, or certification as an engineer intern or land surveyor intern, shall be issued until an applicant has successfully passed an examination given by or under the supervision of the board, nor shall a license as a professional engineer or professional land surveyor, or certification as an engineer intern or land surveyor intern, be issued to an applicant having habits or

character that would justify revocation or suspension of his license or certificate, as provided in section 54-1220, Idaho Code. Except for military personnel stationed in Idaho or persons employed full-time in Idaho, only Idaho residents and students enrolled at Idaho universities and colleges will be assigned to examinations for initial certification or licensure. The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for assignment to an examination:

Editorial Note: The remainder of this section would remain the same and is not duplicated here.

DRAFT AMENDMENTS TO TITLE 54, CHAPTER 12, IDAHO CODE TO ALLOW THE BOARD TO POSTPONE ACTION FOR PENDING DISCIPLINARY ACTION OR EXAM IRREGULARITY

Rationale: The Board is hesitant to assign an applicant to an examination or issue a license to them if there are pending disciplinary actions in another jurisdiction which could result in the filing of a disciplinary action in Idaho that could result in action against the license or certificate. The Board seeks statutory authority to withhold score results if there is an examination irregularity involving the applicant. The Board also seeks statutory authority to investigate examination irregularities and invalidate an examination score if the irregularity is substantiated.

54-1212.GENERAL REQUIREMENTS FOR EXAMINATION AND LICENSE.

Editorial Note: The following paragraph would be added at the end of Idaho Code Section 54-1212. The remainder of the section would remain unchanged.

The Board may postpone acting on an application for assignment to any examination if disciplinary or criminal action related to the applicants practice has been taken or is pending in any other jurisdiction. The Board may postpone release of scores to applicants on any examination if there is any unresolved examination irregularity involving the applicant. The Board may investigate and adjudicate the validity of examination irregularities and if the examination irregularities are substantiated, the board may invalidate the score of the applicant.

54-1219.COMITY LICENSURE -- FEE. The board, upon application therefor and the payment of a fee of not to exceed a maximum of one hundred fifty dollars (\$150), may issue a license as a professional engineer or professional land surveyor to any person who holds a license issued to the applicant by the proper authority of any state, territory or possession of the United States, the District of Columbia, or of a foreign country, provided that, in the opinion of the board, the applicant possesses the education, experience and examination credentials, or their equivalents, that were specified in the applicable licensing chapter in effect in this state at the time such license was issued, provided that a professional land surveyor applicant must successfully pass a land surveying examination as prepared and administered by the board, and provided such state, territory, possession or country will license, without examination and upon substantially the same condition, to applicants holding licenses issued by the board under this chapter. In the event the applicant has been licensed and has practiced as a professional engineer or professional land surveyor in another jurisdiction for a minimum of eight (8) years, has no outstanding disciplinary action, and is in good standing under a licensing system which, in the opinion of the board, maintains substantially equivalent professional standards as required under this chapter, the board may, in its discretion, waive the requirement for satisfaction of prescriptive credentials in education and examination. The Board may postpone acting on an application for a license by comity if disciplinary or criminal action related to the applicants practice has been taken or is pending in any other jurisdiction.

DRAFT AMENDMENTS TO TITLE 54, CHAPTER 12, IDAHO CODE TO ELIMINATE THE REQUIREMENT THAT APPLICATIONS BE SUBMITTED UNDER OATH

Rationale: The Board ultimately wants to allow digital submittal of applications. Submitting applications "under oath" is complicated, and unnecessary, for such applications and the Board wants to eliminate the statutory requirement.

54-1213. APPLICATIONS AND FEES. Applications for licensure as a professional engineer or professional land surveyor, or certification as an engineer intern or land surveyor intern, shall be on forms prescribed and furnished by the board. The application ~~shall be made under oath~~, and shall show the applicant's education and a detailed summary of his engineering or land surveying experience. An applicant for licensure as a professional engineer or professional land surveyor shall furnish not less than five (5) references, of whom three (3) or more should be professional engineers or professional land surveyors, as applicable, having personal knowledge of the applicant's engineering or land surveying experience. Applications for certificates of authorization shall be made in accordance with section 54-1235, Idaho Code.

The maximum application fee for professional engineers or professional land surveyors seeking to be licensed by examination shall not exceed one hundred dollars (\$100). The application fee shall accompany the application. The examination fee, which shall be separate from the application fee, shall be paid by the applicant directly to the entity designated by the board.

The maximum application fee for an applicant who seeks a certificate as an engineer intern or land surveyor intern shall not exceed fifty dollars (\$50.00). The application fee shall accompany the application. The examination fee, which shall be separate from the application fee, shall be paid by the applicant directly to the entity designated by the board.

The maximum application fee for business entities seeking a certificate of authorization shall be two hundred dollars (\$200). The application fee shall accompany the application.

The amount of the license fee or certificate fee shall be fixed by the board prior to June 30 of any year and shall continue in force until changed.

Should the board deny the issuance of a certificate or license to any applicant, the application fee paid shall be retained as a processing fee.

DRAFT AMENDMENTS TO TITLE 54, CHAPTER 12, IDAHO CODE TO ALLOW THE BOARD TO WAIVE THE FE AND THE PE EXAMS FOR A CANDIDATE WITH AN EARNED DOCTORAL DEGREE

Rationale: The purpose of the certification and licensing examinations is to test for minimum competence. Current Idaho Code already mandates waiver of the requirement to pass the FE exam for an applicant with an earned doctoral degree. An applicant who has earned a doctoral degree has taken comprehensive examinations for admission to the doctoral degree program, and then has defended the original research contained in the dissertation for that degree. The Board believes that passage of the comprehensive examinations for admission to the program is the equivalent of passage of the FE exam in terms of demonstrating minimum competence, and that preparation of and defense of the dissertation is the equivalent of passage of the PE exam in terms of demonstrating minimum competence. The addition of an interview with the Board will assure the Board that the candidate understands ethics, the need to practice within their area of competence, etc.

54-1223. SAVING CLAUSE -- EXEMPTIONS. (1) This chapter shall not be construed to affect:

(a) The practice of any other profession or trade for which a license is required under any law of this state or the United States.

(b) The work of an employee or a subordinate of a person holding a license under this chapter, provided such work does not include final engineering design or land surveying decisions and is done under the direct responsibility, checking, and supervision of, and verified by, a person holding a license under this chapter.

(c) Any individual teaching upper division engineering subjects that are classified as engineering design for any college or university in this state as of July 1, 1988, and any such individual employed after July 1, 1988, for a period of five (5) years from the date of employment with any college or university in this state.

(d) An individual doing surveying work for himself, or through a business entity, on property owned or leased by the individual or business entity, or in which the individual or business entity has an interest, estate or possessory right and which affects exclusively the property or interests of the individual or business entity; provided, that all land surveying maps, plats or plans filed with any county recorder's office in the state of Idaho for the purpose of illustrating or defining boundaries of property ownership, shall be made by a licensed professional land surveyor as provided in this chapter.

(e) An individual doing survey work for himself, or through a business entity with respect to the location, amendment, or relocation of a mining claim.

(f) The practice of engineering by employees of a business entity as long as the services provided by them are for internal business entity use only.

(2) The board, at its discretion, may exempt an exceptional individual who has twelve (12) or more years of appropriate experience in engineering from the requirement for satisfactory completion of an examination in the fundamentals of engineering.

(3) An applicant for licensure as a professional engineer either by examination or by comity who has earned a bachelor degree in engineering from an approved engineering program and has, in addition, earned a ~~doctorate~~ doctoral degree in engineering from a college or university which offers an approved undergraduate program in the same discipline as the doctorate degree earned, shall be exempt from the requirement for satisfactory completion of an examination in the fundamentals of engineering and may, at the discretion of the Board, be exempt from the requirement for satisfactory completion of an examination in the principles and practice of engineering so long as the experience requirements of Idaho Code Section 54-1212 are met. Such an applicant shall submit to an interview with the Board. Honorary ~~doctorate~~ doctoral degrees and degrees conferred on the basis of life experiences and the like are not considered earned degrees for purposes of this subsection.

(4) In addition to, and notwithstanding other provisions of this chapter, in circumstances of emergency creating conditions of imminent and substantial danger to the public health, safety or environment through the provision of engineering services, the prosecuting attorney or the attorney general may institute a civil action for an immediate injunction to halt the provision of engineering services.

(5) A professional engineer licensed in Idaho may review the work of a professional engineer who is licensed in another jurisdiction of the United States or a foreign country on a project that is a site adaptation of a standard design plan to determine that the standard design plan meets the standard of care and is applicable to the intended circumstance, with or without modification. The Idaho professional engineer shall demonstrate responsible charge, as defined in this chapter, by performing professional services related to his assignment including developing or obtaining a complete design record with design criteria and calculations, performing necessary code research and developing any necessary and appropriate changes to the standard design plan necessary to properly apply the standard design to the intended circumstance. The nonprofessional services, such as drafting, need not be redone by the Idaho professional engineer, but must clearly and accurately reflect the Idaho professional engineer's work. The burden is on the Idaho professional engineer to show such compliance. The Idaho professional engineer shall have control of and responsibility for the entire work product, shall seal, sign and date it as required in this chapter, and shall be in possession of all original documents or certified copies of documents related to the professional engineer's work for the project.

(6) In the event a licensee in responsible charge of a project leaves employment, is transferred, is promoted, becomes incapacitated, dies or is otherwise not available to seal, sign and date final documents, the duty of responsible charge of the project shall be accomplished by the successor licensee by becoming familiar with and reviewing, in detail, and retaining the project documents to date. Subsequent work on the project must

clearly and accurately reflect the successor licensee's responsible charge. The successor licensee shall seal, sign and date all work product in conformance with section 54-1215, Idaho Code.

**DRAFT AMENDMENTS TO TITLE 50, CHAPTER 13, IDAHO CODE TO ALLOW A
PROFESSIONAL LAND SURVEYOR IN THE SAME BUSINESS ENTITY TO PLACE INTERIOR
MONUMENTS AFTER RECORDING OF PLAT**

Rationale: Current Idaho Code would require the governing body to have the County Surveyor or a contracted Professional Land Surveyor set the interior monuments if the original surveyor is not available or refuses to set them. This amendment would allow the original contracted business entity to designate another of its licensed employees to complete the work, thus eliminating the need for the governing body to undertake extraordinary steps to assure that the monuments are set.

50-1332.SETTING INTERIOR MONUMENTS AFTER RECORDING OF PLAT -- BOND OR CASH DEPOSIT REQUIRED -- RELEASE OF BOND -- RETURN OF CASH DEPOSIT -- PAYMENT FOR SURVEY WORK -- COUNTY SURVEYOR PERFORMING SURVEY WORK. (1) If the interior monuments for a subdivision are to be set on or before a specified date after the recording of the plat of the subdivision, the person subdividing the land described in the plat shall furnish, prior to recording the plat, to the governing body of the city or county which approved the plat, either a bond or cash deposit, at the option of the governing body, in an amount equal to one hundred twenty percent (120%) of the estimated cost of performing the work for the interior monumentation. The estimated cost of performing such work will be determined by the professional land surveyor signing the plat.

(2) If the person subdividing the land described in subsection (1) of this section pays the professional land surveyor for performing the interior monumentation work and notifies the governing body of such payment, the governing body, within two (2) months after such notice, shall release the bond or return the cash deposit upon a finding that such payment has been made. Upon written request from the person subdividing the land, the governing body may pay the professional land surveyor from moneys within a cash deposit or bond held by it for such purpose and return the excess amount of the cash deposit, if any, to such person.

(3) ~~In the event of the death, disability, or retirement from practice of the surveyor charged with the responsibility for setting interior monuments for a subdivision or upon the inability, refusal, or failure of such professional land surveyor to set such the interior monuments for a subdivision,~~ the governing body may direct the county surveyor in his official capacity or contract with a professional land surveyor in private practice to set such monuments and reference such monuments for recording as provided in section 50-1333, Idaho Code. Payment of the fees of a county surveyor or professional land surveyor in private practice performing such work shall be made as otherwise provided in this section. In the event the professional land surveyor signing the plat performed his services through a contract between the person subdividing the land and a business entity possessing a certificate of authorization as required in this chapter, and the professional land surveyor is unable, refuses, or fails to set the interior monuments for a subdivision, a substitute professional land surveyor employed by the same business entity may assume responsible charge for the remainder of the project and set the monuments as provided in this chapter, and the governing body shall not direct the county surveyor or contract with a professional land surveyor in private practice to set such monuments.

(4) In the event any interior monument cannot be placed at the location shown on the plat, the professional land surveyor shall place a witness corner or reference monument and he shall file a record of survey as provided in chapter 19, title 55, Idaho Code, to show the location of any witness corner or reference monument in relation to the platted location of the corner. In the event the professional land surveyor signing the plat does not set the interior monuments for a subdivision, the substitute professional land surveyor shall file a record of survey as provided in chapter 19, title 55, Idaho Code to show which monuments were set by which professional land surveyor.

RESPONSE TO RAYCE RUIZ QUESTIONS FROM FEBRUARY BOARD MEETING

The following is a letter sent to Rayce Ruiz, P.L.S. on February 18, 2011 in response to an inquiry he submitted to the Board:

Dear Mr. Ruiz:

At its meeting on February 7-9, 2011 the Board discussed the questions you posed in an email to Board Members John Howe, P.L.S., Gary L. Young, P.E./L.S. and others. The issue revolved around Idaho Code (IC) Section 55-1613 which states

“55-1613.MONUMENTS DISTURBED BY CONSTRUCTION ACTIVITIES -- PROCEDURE -- REQUIREMENTS. When professional engineers prepare construction documents for projects which may disturb land survey monuments, a field search shall be conducted by, or under the direction of, a professional land surveyor to determine whether monuments, reference monuments or accessories to corners physically exist at the location of, or referencing the location of, public land survey corners, property controlling corners or property corners. Such monuments, reference monuments or accessories to corners shall be located and referenced by or under the direction of a professional land surveyor prior to the time when construction or other activities may disturb them. Such monuments, reference monuments or accessories to corners shall be reestablished and remonumented by, or under the direction of, a professional land surveyor at the expense of the agency or person causing such loss or disturbance. Professional engineers who prepare construction documents which do not indicate the existence of corners, monuments, reference monuments and accessories to corners shall be deemed to be within the purview of section 54-1220, Idaho Code, and shall be subject to disciplinary action as provided in said section. Any person shall be subject to the penalties prescribed in section 54-1234, Idaho Code, if they prepare construction documents for the construction of any facility which do not indicate the existence of monuments, reference monuments and accessories to corners and construction of that facility results in the defacing, injury or removal of monuments, reference monuments or accessories to corners.”

In particular, you said you had questions regarding the phrase “. . . a field search shall be conducted by, or under the direction of, a professional land surveyor to determine whether monuments, reference monuments or accessories to corners physically exist at the location of, or referencing the location of, public land survey corners, property controlling corners or property corners.” Your questions are restated below (in some cases edited slightly) and the Board’s answers follow.

Question: What amount of research is adequate?

- a. To only research documents “of record” such as corner perpetuation records, records of survey, subdivision plats, and right of way plats.
- b. To include documents “not of record”, created by agencies such as Bureau of Land Management, Forest Service, Bureau of Reclamation, highway districts, cities, and old survey firm notes.

Answer: A search of all appropriate records, some of which are described in “a” above, must be performed. A search should also be made to find unrecorded surveys and other pertinent unrecorded documents. Highway districts and cities often have ties to older street centerline locations which deserve recognition. Railroad right-of-way monumentation is also of record in older plans.

IC 55-1613 says “field search”; therefore, a field search must also be done.

The field search must be done to the level that the PLS in responsible charge is confident that all monuments of record have been located or that they have been determined to be lost. A search must be performed to that same level for monuments which are shown on unrecorded documents such as unrecorded surveys.

Question: Are monuments not conforming to code to be re-monumented?

a. Monuments “not of record”, such as P-K nails, R/R spike, or uncapped rebar.

Answer: Many of the monument types listed in “a” above are shown on Records of Survey, which makes them monuments of record. Many of these “monuments” exist on the ground, and are not shown on Record of Surveys. Their perpetuation value depends on what they appear to represent, and that determination is part of the surveyor’s responsibility. A railroad spike which is proven to be at the perpetuated position of a GLO section corner or 1/4 section corner is as valid a position as if it were monumented in conformance with current *Manual of Surveying Instructions* standards.

If the monuments are at public land survey corners, the reconstruction or rehabilitation is covered in 55-1608. The proposed legislation which will be presented during this session of the Idaho Legislature (see House Bill No. 132) is copied below.

55-1608. Professional land surveyor to reconstruct monuments. 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 reconstruct or rehabilitate the monument of such corner, and accessories to such corner.

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.

When non-metallic corner monuments were set in a survey conducted by an agency of the United States government, the corner location shall be re-monumented with a monument conforming 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.

Question: Are disturbed corners to be re-monumented with the same “non-conforming” monument?

Answer: The Board previously answered a question about a Professional Land Surveyor’s duty regarding a pipe of unknown origin and without any known history, which was found during a survey and was going to be destroyed by construction. The Board’s opinion is as follows:

“After reviewing Idaho Code Title 55, Chapters 16 and 19, the Board expressed the opinion that you or any other PLS) have no **other** duty than to replace the pipe in its original location after the construction is completed.

Regardless of whether or not the pipe is a “monument” which by Idaho Code Section 55-1902 definition is at the exact position of a “corner” or a “Property corner”, as alleged by one property owner, no “. . . survey in conformity with established principles of land surveying . . .” (Idaho Code Section 55-1904) is

being performed; therefore, no record of survey is required. Furthermore, unless this pipe is alleged to be a “public land survey corner” or an “accessory to such corner”, no corner record is required per Idaho Code Sections 55-1603 and 55-1604. It also appears clear from Idaho Code Section 55-1608 that only corners required to have a corner record filed on them have to be rehabilitated.”

The PLS in responsible charge must exercise their professional judgment regarding what the monuments that are not at public land survey corners represent and whether to replace them with a monument that complies with 54-1227 or replace the monument that was found.

The documentation on a Record of Survey of what type of monument was found and what type of monument was placed is essential to preserve these monuments.

Questions: What amount of time was intended for the field search to remain valid? The phrase in the law “. . . prior to the time when construction or other activities may disturb them” is vague. Most ITD projects are designed years in advance. Should a second and/or final field search be done just prior to construction?

Answers: The answers to these questions depend upon the level of survey activity or probable monument disturbance in the project area since the original field search was conducted. In developing areas, records of survey, corner records and plats will have been filed. A records search will determine the necessity for the additional field search. The second records search should be mandatory. The probability that some monuments have been disturbed in the interim would not necessarily require a field survey. The presumption is that monuments disturbed in the interim should be replaced. The engineer in responsible charge of final plan preparation must correctly represent the monumentation to be preserved or replaced.

Question: Does the “field search” require “survey quality positions” on found monuments?

Answer: The monuments that may be destroyed by construction must be located by an accurate field survey so they can be replaced in the same position after construction, and so those positions are available to another surveyor if they need them after the monument is destroyed and prior to it’s replacement, i.e. during construction.

Question: Does the “name, monument type, and approximate location” of a monument shown graphically on construction plans or included as a bid item in a contract comply?

Answer: No. The monuments that may be destroyed by construction must be located by an accurate field survey so they can be replaced in the same position after construction, and so those positions are available to another surveyor if they need them after the monument is destroyed and prior to it’s replacement, i.e. during construction.

To insure that the Professional Engineers who are charged with the responsibility for implementing 55-1613, we are sending a copy of this letter to ACEC, ISPLS, and ISPE. Please share this with the appropriate engineers within ITD. We stand ready to participate in future stakeholders discussions and resolution of this matter.

Please call if you have any questions.

For the Board,
Gary L. Young, P.E./L.S.
Board Chair

RESPONSE TO KEN THOMASON QUESTIONS FROM FEBRUARY BOARD MEETING

The following is a letter sent to Ken Thomason, P.L.S. on February 14, 2011 in response to an inquiry he submitted to the Board:

Dear Mr. Thomason:

At its meeting on February 7-9, 2011 the Board discussed the questions you posed in an email to Board Members and others. The issues revolved around Idaho Code (IC) Section 55-1613 which states

“55-1613.MONUMENTS DISTURBED BY CONSTRUCTION ACTIVITIES -- PROCEDURE -- REQUIREMENTS. When professional engineers prepare construction documents for projects which may disturb land survey monuments, a field search shall be conducted by, or under the direction of, a professional land surveyor to determine whether monuments, reference monuments or accessories to corners physically exist at the location of, or referencing the location of, public land survey corners, property controlling corners or property corners. Such monuments, reference monuments or accessories to corners shall be located and referenced by or under the direction of a professional land surveyor prior to the time when construction or other activities may disturb them. Such monuments, reference monuments or accessories to corners shall be reestablished and remonumented by, or under the direction of, a professional land surveyor at the expense of the agency or person causing such loss or disturbance. Professional engineers who prepare construction documents which do not indicate the existence of corners, monuments, reference monuments and accessories to corners shall be deemed to be within the purview of section 54-1220, Idaho Code, and shall be subject to disciplinary action as provided in said section. Any person shall be subject to the penalties prescribed in section 54-1234, Idaho Code, if they prepare construction documents for the construction of any facility which do not indicate the existence of monuments, reference monuments and accessories to corners and construction of that facility results in the defacing, injury or removal of monuments, reference monuments or accessories to corners.”

Your commentary and questions are restated below (in some cases edited slightly) and the Board’s answers follow.

Commentary and Question: In District 4, the public at large frequently requests plan sets for past projects, sometimes decades old. Generally, the plans prepared and stamped (certified) by the District Design Engineer for bidding purposes are provided. This engineer also prepares a proposal document in anticipation of bidding. Members of the public upon their requests for copies of “the plans” are rarely provided with copies of past proposal documents. Both documents are provided to a second ITD engineer, the ITD Resident Engineer, who manages any construction effort. Can the District Land Surveyor provide the existence of monuments directly to the Resident Engineer after bidding (and prior to construction) such that neither the proposal nor “the plans” prepared by the District Design Engineer need indicate the existence of monuments? In other words, does this law only govern the Resident Engineer when the existence of monuments are not indicated by the bidding documents? Do files held by the Resident Engineer but not the District Design Engineer meet the requirements of this law in that all of it together could be viewed by some as the “construction documents”?

Answer: The District Surveyor cannot comply with IC 55-1613 by submitting monument locations to the Resident Engineer only. The law is not about the Resident Engineer unless he prepared the plans.

Commentary and Question: Sometimes, there are no plans – only a proposal document. In those cases, there would never even be a set of as-constructed plans for the public to request years later. If the existence of monuments must be indicated in the bidding documents, can the District Land Surveyor simply create a table for the proposal document containing approximate locations from ITD maps of record (which may be as antiquitous as 50 to 90 years old) – thus avoiding the need to incur the expense of surveying the project twice?

Expressed yet another way, does the benefit to the public of avoiding the need to incur the expense of surveying the project twice (indeed, we *are* all taxpayers, right) counteract a benefit to the public of requiring the bidding documents to indicate accurate survey quality positions as alluded to below?

Answer: IC 55-1613 refers to “construction documents” not plans. If there are not “plans”, then a tabular form would be acceptable if it shows, as a minimum, a) what it represents, b) what was found, c) location by station and offset, d) survey quality location by coordinates, and e) description of replacement monument, if replaced. Approximate locations are not adequate to reset monuments in their original location. A search of all appropriate records must be performed. A search should also be made to find unrecorded surveys and other pertinent unrecorded documents. Highway districts and cities often have ties to older street centerline locations which deserve recognition. Railroad right-of-way monumentation is also of record in older plans.

IC 55-1613 says “field search”, therefore a field search must also be done.

The field search must be done to the level that the PLS in responsible charge is confident that all monuments of record have been located or that they have been determined to be lost. A search must be performed to that same level for monuments which are shown on unrecorded documents such as unrecorded surveys.

Commentary and Question: I.C. § 55-1603(4) defines “*establish*” to mean the determination of a position “either physically or mathematically”. Then, I.C. § 50-1303 for plats implies that monuments shall be located and marked so that measurements may be taken within one-tenth (1/10) of a foot; 1303 also suggests that surveying [of plats] shall be conducted in such a manner as to produce an unadjusted mathematical error of closure of not less than one (1) part in five thousand (5,000). In neighboring states, similar error of closure laws exist (W.A.C. § 332-130-090) as well as additional minimum standard requirements for relative accuracy (95% confidence levels) meant to apply more directly to contemporary methods of surveying such as that of differential GPS (W.A.C. § 332-130-080). Whether we’re talking about just plats, or surveying in general, these laws regarding accuracy convey the spirit of the phrase “survey quality positions”. Unlike the word “*establish*” (which is applied when “*reestablish*” is used) that *is* defined by I.C. § 55-1603(4), the word “*located*” is not defined by I.C. § 55-1603(4). Does the use of the term “*located*” in the phrase “located and referenced” in this law specifically call for survey quality positions, or can an approximation technique as described in question 5 above alleviate the need to publish survey quality positions in any “construction documents”, and thus alleviate the need to incur the expense of surveying the project twice?

Answer: Property corners and property controlling corners are valuable public property which need to be protected in the event construction activities might disturb or destroy them.

The monuments that may be destroyed by construction must be located by an accurate field survey so they can be replaced in the same position after construction, and so those positions are available to another surveyor if they need them after the monument is destroyed and prior to it’s replacement, i.e. during construction.

Public land survey corner monuments must also be referenced to objects outside the construction area and a Corner Perpetuation Record filed. Monuments that are not at public land survey corners could also be referenced in the same fashion.

To insure that the Professional Engineers who are charged with the responsibility for implementing 55-1613, we are sending a copy of this letter to ACEC, ISPLS, and ISPE. Please share this with the appropriate engineers within ITD. We stand ready to participate in future stakeholders discussions and resolution of this matter.

Please call if you have any questions.

For the Board,
Gary L. Young, P.E./L.S., Board Chair

DISCIPLINARY ACTIONS

The following final formal actions have been taken by the Board since publication of NEWS BULLETIN No. 46 in November of 2010.

Docket No. FY 11.08 – IN THE MATTER OF LARRY R. McGINNIS, P.E. Mr. McGinnis signed a Stipulation and Consent Order in which he agreed that there may be evidence that he used the altitude and air temperatures different than typical designers would use for calculations intended for construction of HVAC systems in Cascade, Idaho, which, if proven could be deemed a violation of IDAPA 10.01.02.005.02, standard of care. The Board approved the stipulation, but that approval shall not be construed as a finding or determination by the Board that any such violations actually occurred. Mr. McGinnis voluntarily surrendered his license to practice as a professional engineer in the state of Idaho, agreed not to renew or seek reinstatement of his license in Idaho.

IN MEMORY OF THOSE RECENTLY DECEASED

John E. Dixon, AgE/LS 1255, Moscow, ID
Tim V. Gibbons, CE/LS 4536, Logan, UT
Keith A. Hansen, CE 1022, Brigham, City, UT
John L. Hoffmann, CE/LS 573, Boise, ID
Roger F. Kinsey, EE 5012, Boise, ID
Roderick R. Kirkwood, ME 1804, Kent, WA
William F. Ringnalda, CE/LS 3513, Salem, OR
Linda Robertson Stuffle, EE 6281, Pocatello, ID
Wilfred J. Struck, GeoE 7785, Red Lodge, MT
Ramon D. Upsahl, CE 2188, Bellevue, WA
Matthew J. Warner, ME 11870, Helena, MT