

BEFORE THE BOARD OF PROFESSIONAL
ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 24.183.1001,) ON PROPOSED AMENDMENT
pertaining to form of corner)
records)

TO: All Concerned Persons

1. On May 5, 2005, at 10:00 a.m., a public hearing will be held in room B-07 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact Todd Boucher no later than 5:00 p.m., April 29, 2005, to advise us of the nature of the accommodation you need. Please contact Todd Boucher, Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2368; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdpels@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.183.1001 FORM OF CORNER RECORDS - INFORMATION TO BE INCLUDED (1) The form for recordation of corners pursuant to the Corner Recordation Act of Montana (Title 70, chapter 22, part 1, MCA) has been approved by the board of professional engineers and land surveyors. The approved version of the form for public land survey system was adopted by the board on July 1, 1981, and the approved version of the form for filing under the survey of record index was adopted on February 20, 2004. Blank corner record forms can be obtained from the Montana Association of Registered Land Surveyors, ~~82 Stonecrest Drive, Kalispell~~ P.O. Box 359, Columbia Falls, Montana 59901 59912, ~~or~~ by contacting the association directly at (406) ~~756-0680~~ 892-4579, or on the internet at www.marls.com.

(2) The information to be included in a corner record is as follows:

(a) ~~Original and subsequent record. This item should describe or quote~~ A description or quotation of those portions of the original or subsequent record which were used in evaluating the corner position.

(i) The original record for corners of government surveys will usually be the general land office field notes.

(ii) The original record for nongovernment surveys will usually be subdivision plats, certificates of survey or other surveys of record.

(iii) Subsequent record can come from several sources such as previously filed corner records, maps and plats, private and public records, etc. Some of the subsequent record, even though not in the public record, but known to have validity by the surveyor, may be quoted and appropriately noted. The record data helps support the reestablished corner position because they clearly show on what history the surveyor based his the corner position on. In some cases, however, the record may be unknown or not pertinent. A statement to that effect, should if applicable, must appear on the corner record.

~~(b) Description of evidence found or method of locating corner position: This item will describe~~ A description of the original or subsequent record evidence found that locates the corner position.

(i) If portions of the found evidence cannot be reconciled with the record, then the disregarded record should must be noted, and if possible, an opinion as to its cause narrated.

(ii) If no physical evidence of the original or subsequent monuments and accessories can be found, then the method used to reestablish the lost or obliterated corner (single proportion, fence intersection, parol evidence, terrain calls, centerline of road, etc.) shall be indicated.

(iii) Measurements used to establish proportioned positions must be shown on the corner recordation form or on a filed certificate of survey or subdivision plat referenced on the recordation form.

~~(c) Description of monuments and accessories set to perpetuate the corner position: This item should list~~ A listing of all details about the corner and its location which will help exclusively identify the corner position, including size and type of monument and accessory, how marked if not shown in sketch, and distinguishing topographic calls which help locate the corner. In many cases, instructions on how to find the corner should be included.

(i) For public land survey system corners requiring recordation, sufficient information must be shown on the form to enable subsequent surveyors to verify the corner position identified on the form, and to reestablish the corner position if the monument is obliterated. Ideally, the references will be to at least two identifiable accessories or surveyed dimensions to two survey monuments.

(ii) References or ties to other corners are optional and may be drawn on the face or back of the corner record form, or references to certificate of survey may be made. Separate drawings may be attached to the corner form. If state plane coordinate values for the corner position are

shown, then the control upon which they are based should be indicated.

(d) ~~Sketch of corner: This item will usually~~ A sketch of the corner to show how a found or set corner is marked and may also or show topography or accessory monuments found or set and their relation to the corner. There is no stipulated format; the sketch could be transcribed field note entries. For corners which were first shown on subdivision plats or on recorded or filed surveys, enough information must be shown so that the corner can be identified.

(e) ~~Certification: The name and signature of the ground party chief is optional.~~ The surveyor who performed or directed the field work which is depicted on the ~~"certified corner record"~~ corner record shall sign and affix his the licensee's seal in the certification.

(i) The affixing of the licensee's seal constitutes a certification by the surveyor that the corner record has been prepared in conformance with the Corner Recordation Act of Montana and the rules implementing the Act.

(ii) The employer blank is optional but useful in tracking down original field note data or adjacent record if, in the future, questions arise about the corner. The name and signature of the ground party chief is also optional information on the record form.

(f) ~~Cross index and section diagram: The~~ For public land survey system corners, the cross index at the bottom of the page ~~should~~ must be completed by the surveyor. Only the single township and range index where the corner is filed ~~shall~~ is to be completed.

(i) For corner records to be filed under the survey of record index, the index information must be filled in as completely as possible by the surveyor and made clear the name and number(s) of the recorded survey and the lot or parcel designation. The lower righthand corner is a corner location diagram and should must have the pertinent section number filled in at the top and a closed circle indicating the appropriate corner position in the section filled in. This is intended to be an aid in searching the "record" record once it has been filed.

AUTH: 37-67-202, 70-22-107, MCA
IMP: 70-22-107, MCA

REASON: There is reasonable necessity for the Board of Professional Engineers and Land Surveyors (the Board) to amend ARM 24.183.1001 to update the references to the most recently adopted corner recordation form, which was approved by the Board in February 2004 at the request of the Montana Association of Registered Land Surveyors. In addition, there is reasonable necessity to amend the rule by clarifying the various items of information that are to be included by the surveyor on the form, in order to update terminology and usage. There is reasonable necessity to update the citation with an additional source of the Board's rulemaking authority

when the rule is otherwise being amended. Finally, there is reasonable necessity to amend the rule to delete the so-called internal catchphrases, pursuant to ARM 1.2.215(1), and to make usage consistent with the style guidelines promulgated in the Legislative Services Division's Bill Drafting Manual.

The Board notes that somewhat similar changes were proposed for ARM 24.183.1001 last year (in MAR Notice No. 24-183-28, published July 22, 2004), but that after public comment, the Board decided not to take final action at that time. The version proposed here incorporates, in part, comments made about the prior proposal.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to Todd Boucher, Board of Professional Engineers and Land Surveyors, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdpels@mt.gov and must be received no later than 5:00 p.m., May 13, 2005.

5. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://engineer.mt.gov>, in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The Board of Professional Engineers and Land Surveyors maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Professional Engineers and Land Surveyors administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Professional Engineers and Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdpels@mt.gov or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

8. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
PAULETTE FERGUSON, PRESIDING
OFFICER

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 4, 2005