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SURVEYS--PLATS AND SUBDIVISIONS--FILING AND RECORDING

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.

January 20, 1989

Honorable Brian Boyle
Commissioner of Public Lands
Department of Natural Resources
Olympia, Washington 98504

Cite as:
AGO 1989 No. 1

Dear Commissioner Boyle:

By letter previously acknowledged, you requested our opinion on several questions concerning the Survey Recording Act, chapter 58.09 RCW. We have reordered your questions as follows:

1. Does RCW 58.09.040(1)(a) through (d) limit the types of surveys required to be filed?
2. Does the Survey Recording Act require the filing of a record of survey subsequent to the physical location of a boundary line between two existing corner monuments?
3. Does the answer to question 2 vary depending on the physical objects used to mark the boundary line, i.e., whether the line is marked by flags or by iron pipes?



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4. Does the Survey Recording Act require the filing of a record of survey subsequent to the reestablishment of a corner position previously recorded in the county under any local subdivision or platting law or ordinance?
5. Does the answer to question 4 depend on whether the corner was previously monumented and the monument is lost or the corner was not originally monumented?

We answer questions 1 and 2 in the negative, question 4 in the affirmative, question 5 in the negative, and do not reach question 3.

Question 1

The first of your questions is:

Does RCW 58.09.040(1)(a) through (d) limit the types of surveys required to be filed?

To place your question in perspective, we will first set forth the entire text of RCW 58.09.040:

After making a survey in conformity with sound principles of land surveying, a land surveyor may file a record of survey with the county auditor in the county or counties wherein the lands surveyed are situated.

(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.

(2) When a licensed land surveyor, while conducting work of a preliminary nature or other activity that does not constitute a survey required by law to be recorded, replaces or restores an existing or obliterated general land office corner, it is mandatory that, within ninety days thereafter, he shall file with the county auditor in the county in which said corner is located a record of the monuments and accessories found or placed at the corner location, in such form as to meet the requirements of this chapter.

Initially, RCW 58.09.040 makes it clear that not all surveys must be recorded pursuant to the act.¹ The first sentence of the statute says that a land surveyor "may" file a record of survey. If it were mandatory that all records of surveys be filed, the statute would use "shall" instead of "may".² Also, if all surveys had to be recorded, then subsection (1) of RCW 58.09.040 would not have been necessary.

RCW 58.09.040(1) makes it "mandatory" to file a record of certain surveys. Your inquiry is the role of paragraphs (a) through (d) in defining which surveys must be filed.

At least two constructions are possible. Under one possible interpretation, paragraphs (a) through (d) would limit the surveys required to be filed to those which disclose one or more of the conditions listed in paragraphs (a) through (d). Under this interpretation, if the survey did not involve at least one of these conditions, it would not have to be filed.

Another possible interpretation is that paragraphs (a) through (d) do not limit or describe the types of surveys that must be filed. Under this interpretation, the description of what surveys must be filed would be found elsewhere in RCW 58.09.040(1), and the effect of paragraphs (a) through (d) would

¹ RCW 58.09.020(3) defines "survey". It reads:

"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.

² See, e.g., Singleton v. Frost, 108 Wn.2d 723, 728, 742 P.2d 1224 (1987).

be merely to require, if any of those conditions existed, that the record of survey being filed clearly disclose them.

We conclude that the latter construction is the proper one and that paragraphs (a) through (d) do not limit the types of surveys required to be filed. We reach this conclusion primarily from the language of RCW 58.09.040(1) itself. Repeated for convenience, that subsection reads:

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.

(Emphasis added.)

In our view, the surveys that must be filed pursuant to this subsection are all surveys which establish, reestablish, or restore either "a corner on the boundary of two or more ownerships" or a general land office corner.³ The critical words in the statute are: "It shall be mandatory . . . that a land surveyor shall file . . . a record of such survey" (Emphasis added.) In our view, "such" survey refers to the description preceding it, namely, any survey which establishes, reestablishes, or restores a corner. As noted by the Washington

³ "A corner is a point of change of direction of the boundary of real property. It may be marked by a monument, fence, or other physical object, or it may not be marked at all." C. Brown, W. Robillard & D. Wilson, Boundary Control and Legal Principles 86 (3d ed. 1986).

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Supreme Court in Jepson v. Department of Labor & Indus., 89 Wn.2d 394, 404, 573 P.2d 10 (1977): "The word 'such' is a descriptive and relative adjective that refers back to and identifies something of like kind previously spoken of."

If paragraphs (a) through (d) were intended to be limitations on the types of surveys that had to be filed, we would expect the language to be phrased differently. We would expect the critical language to read: "A land surveyor shall file . . . a record of any such survey . . . which discloses"

In summary, then, the surveys that must be filed pursuant to RCW 58.09.040(1) are all those which establish, reestablish, or restore a corner on the boundary of two or more ownerships or a general land office corner. Paragraphs (a) through (d) of RCW 58.09.040(1) do not limit the types of surveys required to be filed. However, when any of the conditions in paragraphs (a) through (d) is found, this shall be disclosed clearly on the record of survey being filed.

Question 2

Repeated for convenience, your next question is:

Does the Survey Recording Act require the filing of a record of survey subsequent to the physical location of a boundary line between two existing corner monuments?

In answering this question we refer again to RCW 58.09.040, which is the section that prescribes which surveys must be filed (subject to certain exceptions found in later sections). As discussed in connection with question 1 above, RCW 58.09.040 does not require that all records of surveys be filed. RCW 58.09.040 requires records of surveys to be filed when the survey involves the "establishment, reestablishment or restoration of a corner". Since your question presupposes "two existing corner

⁴ Some of these surveys may be exempt from being filed because of exemptions found elsewhere in chapter 58.09 RCW. See RCW 58.09.090.

⁵ Our conclusion is consistent with the description of the operation of RCW 58.09.040 in AGLO 1980 No. 31, which dealt with the authority of a county auditor to reject records of survey which do not comply with the act.

monuments",⁶ the survey you describe does not appear to involve the "establishment, reestablishment or restoration" of any corners. Accordingly, it need not be recorded pursuant to chapter 58.09 RCW.

Question 3

Repeated for convenience, your third question is:

Does the answer to question 2 vary depending on the physical objects used to mark the boundary line, i.e., whether the line is marked by flags or by iron pipes?

In view of our negative answer to question 2, it is not necessary to reach question 3.

Question 4

Repeated for convenience, your fourth question is:

Does the Survey Recording Act require the filing of a record of survey subsequent to the reestablishment of a corner position previously recorded in the county under any local subdivision or platting law or ordinance?

This question requires an analysis of the relationship between RCW 58.09.040(1) and 58.09.090(1)(c). As discussed in connection with previous questions, RCW 58.09.040(1) requires

⁶ The statute does not define "monument". One legal dictionary defines "monument" as follows:

In real-property law and surveying, monuments are visible marks or indications left on natural or other objects indicating the lines and boundaries of a survey. In this sense the term includes not only posts, pillars, stone markers, cairns, and the like, but also fixed natural objects, blazed trees, and even a water-course. Any physical object on ground which helps to establish location of line called for; it may be either natural or artificial, and may be a tree, stone, stake, pipe, or the like. *Delphey v. Savage*, 227 Md. 373, 177 A.2d 249, 251.

Black's Law Dictionary 909 (5th ed. 1979). See also WAC 332-120-010, which contains a somewhat different definition.

⁷ While such a survey need not be filed, if it is filed, it must comply with the provisions of chapter 58.09 RCW. See RCW 58.09.030.

filing of a record of a survey involving the "establishment, reestablishment or restoration of a corner".

RCW 58.09.090 reads:

(1) A record of survey is not required of any survey:

(a) When it has been made by a public officer in his 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;

(b) When it is of a preliminary nature;

(c) When a map is in preparation for recording or shall have been recorded in the county under any local subdivision or platting law or ordinance.

(2) Surveys exempted by foregoing subsections of this section shall require filing of a record of corner information pursuant to RCW 58.09.040(2).

(Emphasis added.)

RCW 58.09.090(1) does not, by its express language, create any exemption to any filing requirements. It states: "A record of survey is not required" (Emphasis added.) This term is not defined in chapter 58.09 RCW, nor does the chapter anywhere impose any requirement to make a "record of survey". In some sections of the chapter it appears that a "record of survey" is not the same as "filing" the record of survey. See RCW 58.09.040, .050, .100, .110. However, elsewhere in the chapter it seems that making the record of survey and filing it are essentially the same thing. See RCW 58.09.060. Although the language does not expressly say so, we conclude that the exemptions in RCW 58.09.090(1) are exemptions from filing the "record of survey", not merely from making it.

The answer to your question depends on what is meant by "reestablishment . . . of a corner" in RCW 58.09.040(1). The purpose of RCW 58.09.090(1)(c) seems to be to avoid unnecessary duplication in filing records of survey. If the survey is done in connection with a map to be recorded under a local subdivision or platting law, then it is exempt from filing. Also, if the

survey simply uses corners that appear on a map already filed under a local subdivision or platting law, then it does not need to be filed. However, when the surveyor does not simply go from the corners on a previously filed subdivision or plat map but instead "reestablishes" the corner, then the record of the survey must be filed. "Reestablish", as we view it, means to redetermine the location of the corner according to sound principles of land surveying. It may be that the corner turns out to be at the same location as on the previously filed subdivision map or plat, but so long as the surveyor makes a conscious redetermination of the location of the corner, the record of survey must be filed pursuant to RCW 58.09.040(1).

Our conclusion is supported by RCW 58.09.010, which states that the purpose of chapter 58.09 RCW is "to provide a method for preserving evidence of land surveys" Presumably, if the corner had to be reestablished, then it was not sufficiently well monumented, the existence of the previously filed subdivision map or plat notwithstanding, and the record of survey should be filed.

Question 5

Your final question is as follows:

Does the answer to question 4 depend on whether the corner was previously monumented and the monument is lost or the corner was not originally monumented?

Your question presupposes, as does question 4, that there was a reestablishment or restoration of a corner. If the survey is not exempted by RCW 58.09.090(1)(c) and must be filed, then it does not matter whether a corner monument was lost or was never placed initially.⁸ Thus, the answer to this question is no.

⁸ As the Survey Recording Act continues in effect, instances of lost or unmonumented corners should decline. Chapter 58.09 RCW assumes that surveys performed in accordance with it will involve proper monumenting of corners which are established, reestablished, or restored. See RCW 58.09.010, .020(3), .040(2), .060, .120. See generally Comment, Boundary Law: The Rule of Monument Control in Washington, 7 U. Puget Sound L. Rev. 355, 371 n.87 (1984).

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We trust that the foregoing will be of assistance to you.

Very truly yours,

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