

**BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
GEOLOGISTS**

FINAL STATEMENT OF REASONS

Hearing Date: January 5, 2016

Subject Matter of Proposed Regulations: Corner Record

(1) Section(s) Affected: 464

Updated Information

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

Title 16, California Code of Regulations (CCR) Section 464, was last amended in 1993, excluding changes without regulatory effect. The dates identified in the initial statement of reasons, 1997 and 1977 respectively, are incorrect.

The Factual Basis/Rationale section refers to the form as BORPELS-1297. The form is being renamed within this regulation as BPELSG-2016.

The Board noticed and scheduled a public hearing, held on January 5, 2016, to accept comments from the initial 45-Day comment period. The changes to 16 CCR Section 464, as a result of the comment period and comments received, are summarized below:

- Amend Section 464 (a) identifying Business and Professions Code Section 8773.1 as source of origination.
- Amend Section 464 (a)(5)(A) removing (A) and (B) and adding in language currently in use to describe the condition of noted monuments on the form.
- Amend Section 464 (a)(10) referencing corner drawings and renumber following sections appropriately.
- Amend Section 464 (h) to update the year of the form.
- Amend the Corner Record Form to include appropriate designations relating to the California Coordinate System (CCS) and use terminology appropriate to the CCS.

The Board issued a 15-Day public comment period as a result of changes, March 17, 2016, to April 4, 2016, to allow the public to comment on modified text. Additional comments were received and the changes are summarized below:

- Amend Section 464 (a)(2) to include the word "section" to the brief legal description.

- Amend Section 464(a)(7) to include applicable provisions of Business and Professions Code Section 8764 applicable to the filing of a Corner Record.
- Amend the Corner Record Form as it applies to the optional use of California Coordinates and those values mandated in Public Resources Code.

The Board issued an additional 15-Day public comment period as a result of changes, April 25, 2016, to May 13, 2016, to allow the public to comment on modified text. No comments were received during the second 15-day comment period. On June 9-10, 2016, after having considered all comments in the record, the Board, adopted the final language.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

This action will not have a significant adverse economic impact on small businesses. The licensed professional is responsible for submitting the corner record form to the appropriate county surveyor's office. A small business has no affiliation with this process.

The anticipated benefits of this regulatory proposal are this proposed regulatory action will ensure that the information contained on the Corner Record document is clear, concise, and relevant. It will result in the consumer being charged less money and the licensees taking less time in completing projects since the Corner Record form will be more clear and efficient. In addition, the upgrade to the new form will allow for electronic submission, review, approval, and filing. The amendments will help to maintain the Board's mission to safeguard the life, health, property, and welfare of the public.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

This proposal does not add or create any new requirements relating to the preparation and filing of a Corner Record by licensees of the Board or in the review of Corner Records by the County Surveyor. There are several statutes that address these requirements, including the requirement to prepare and file a Corner Record "on a form prescribed the Board." These statutes have been amended over time; however, 16

CCR 464 was not updated to correspond with the amendments to those statutes. This proposal updates the language (text) to correspond with the statutory requirements by providing specific reference to the difference statutes that require the preparation and filing of a Corner Record and by addressing what must be shown on the Corner Record form in each of those instances. This proposal also updates the form to match the requirements described in the text. Since the preparation and filing of a Corner Record on a form prescribed by the Board is required by various statutes, there is no other alternative that would allow the Board to specify the form and to clarify what must be shown on the form based on the different statutes than to update the regulation.

Objections or Recommendations/Responses

The following recommendation and/or objections were made regarding the proposed action during the initial comment period:

Comment (1) – Letter dated December 28, 2015, from Professional Engineers in California Government (PECG):

PECG reported that their members, in general, responded favorably to the proposed changes but provided concerns with the requirement that Surveyors will need to reference the specific code section that relates to the information that they will provide on the Corner Record form. PECG and their Land Surveyor members feel this is an unnecessary addition, would delay the approval and processing of the submitted Corner Records, and is an unnecessary burden on the submitting Land Surveyor.

Response to Comment (1):

The Board rejects this comment. The Board believes it is incumbent upon the Licensed Land Surveyor performing the survey to understand their responsibility and duty pertaining to fully recognizing the statutory requirement(s) for the preparation and filing of a Corner Record in accordance with the Professional Land Surveyors' Act and the Board Rules. We believe that indicating on the Corner Record form the section of law under which the Corner Record is being filed will decrease the amount of time required for review and approval by the filing agency as it will make clear the specific requirements and provisions of law that are applicable to that Corner Record.

Comment (2) – Email Message, dated December 4, 2015, with attachment from California Department of Transportation (Caltrans) and comments made at the hearing:

Caltrans suggested amendments to Page 1 of 2 of the proposed Corner Record form related to the use of appropriate designations relating to the optional use of California Coordinate System coordinates.

Response to Comment (2):

The Board accepts the implied intent of these comments, which is to make it clear on the form that the reference is specifically to the California Coordinate System (CCS) and to

use terminology appropriate to the CCS. We have made changes to Page 1 of 2 for clarification.

Letter, dated December 28, 2015, from the California Land Surveyors Association:

The California Land Surveyors Association (CLSA) submitted a letter in which they provided one comment from CLSA's Legislative Committee and seven additional comments from unidentified individual members of CLSA's Legislative Committee. These comments are listed separately as Comment (3) through Comment (10).

Comment (3):

CLSA forwarded comment from its Legislative Committee related to inclusion of the language referencing Business and Professions section 8764 stating that the additional language directly referencing Section 8764 does not serve the purpose of interpreting statute more clearly because Section 8764 pertains to information to be included on a Record of Survey, not a Corner Record. They suggested that the Board remove the reference to Section 8764 and replace it with language that specifically relates to Corner Records.

Response to Comment (3):

The Board rejects this comment. Section 8765(d) provides an exemption from the requirement to file a Record of Survey as long as a Corner Record is filed. Section 8764 identifies information that, when applicable, needs to be shown on a Record of Survey to allow sufficient understanding of a monument's pedigree. It is appropriate that the applicable provisions of Section 8764 would be shown on the map that can be filed in lieu of a Record of Survey (i.e., a Corner Record). Just as the statute uses the phrase "applicable provisions" to allow the preparer to determine which information applies and must be included on a Record of Survey, the Board is using the same phrase for the same reason in Board Rule 464 regarding the preparation and filing of a Corner Record.

Comment (4):

Unknown Individual Member of CLSA: An unknown member of CLSA's Legislative Committee asked for an explanation of what the Agency Index Number is as proposed on the new Corner Record form and questioned if it was the same as the County Surveyor Index Number.

Response to Comment (4):

Since the origins of the Corner Record form, county agencies have included various methods of identification, using a variety of names, on the form to help "index" the filed forms in their offices in spite of state law stating that no changes could be made to the form. The Board is aware of this trend and understands the agency's need to be able to include an identification for the purposes of indexing; however, we also know that County Surveyors' Offices throughout the state are organized managerially in different configurations and use different terminology, such as "County Surveyor Index Number."

Therefore, we chose to add a generic location using generic terminology for the County Surveyor to use for this purpose and to standardize the usage across California.

Comment (5):

Unknown Individual Member of CLSA: An unknown member of CLSA's Legislative Committee requested changing the title of the form from "Corner Record" to "Monument Record."

Response to Comment (5):

The Board rejects this comment. The requested change would require legislative revision as the term "Corner Record" is used throughout the Professional Land Surveyors' Act in addition to other statutory codes.

Comment (6):

Unknown Individual Member of CLSA: An unknown member of CLSA's Legislative Committee requested the removal of the word "brief" from the proposed language under Board Rule 464(a)(2), which is currently proposed to read: "A brief legal description...."

Response to Comment (6):

The Board rejects this comment. The noted language was proposed by the Board to replace "An identification..." in the current Corner Record form due to inconsistent use by licensed land surveyors as to what exactly was required in this section of the form, which in many cases resulted in inadequate or no entry on the form for this information. The Board believes that the term "legal description" is commonly used to describe the location of property boundaries within a legal document (i.e., Grant Deed, etc.) and by using the word "brief," the land surveyor is clearly only required to use language such as would normally be found in the preamble of a legal description on the form as a general identification of the property where the survey was performed.

Comment (7):

Unknown Individual Member of CLSA: An unknown member of CLSA's Legislative Committee requested the addition of "...or sectionalized Rancho,..." to the proposed language under Board Rule 464(a)(2), which is currently proposed to read: "...of the township, range, base, and meridian or the Rancho, in which the corner is located...."

Response to Comment (7):

The Board rejects this comment. The Board believes this requested language is not applicable or necessary and believes that the individual completing the form can simply use the "Other" choice under CORNER TYPE on the form when conditions may exist that are other than what is listed.

Comment (8):

Unknown Individual Member of CLSA: An unknown member of CLSA's Legislative Committee requested that proposed language under Board Rule 464(a)(5)(A) be revised to standardize with language currently in use to describe the condition of noted monuments on the form.

Response to Comment (8):

The Board accepts this comment and has revised the proposed language and form to be consistent with other language currently in use in statute and regulation.

Comment (9):

Unknown Individual Member of CLSA: An unknown member of CLSA's Legislative Committee asked why the last sentence of current Board Rule 464(a)(6) [proposed to be Board Rule 464(a)(9)] was being removed.

Response to Comment (9):

Insofar as this comment might be interpreted as a suggestion that the language should not be removed from the regulation, the Board accepts the comment. However, we believe the sentence should be in a separate subdivision to provide clarification that it pertains to all corners other than Public Land Corners for which a corner record is required by Section 8773(a). Therefore, we have created a new subdivision [(a)(10)] and rephrased the sentence.

Comment (10)

Unknown Individual Member of CLSA: An unknown member of CLSA's Legislative Committee asked why the language currently stated in Board Rule 464(e) was being removed.

Response to Comment (10)

Insofar as this comment might be interpreted as a suggestion that the language should not be removed, the Board rejects the comment. The language proposed to be removed from the current Board Rule 464(e) predated the addition of Section 8765(d) to the Professional Land Surveyors' Act. The first sentence of the current subdivision (e) is contained in Section 8765(d); therefore, it is unnecessary and duplicative to include it in regulation. The second sentence of the current subdivision (e) is proposed to be included in the new subdivisions (e) and (f); as such, it is not being removed from the regulation.

The following recommendations and/or objections were made regarding the proposed text during the first 15-day modified comment period:

Comment (1) – Email message, dated March 18, 2016, from David Woolley:

Mr. Woolley requests that the "proposed language shown for 464(a)(7) which states in pertinent part '...the corner record shall also show the applicable provisions of Section

8764 of the Code.’ The Code Section 8764 is exclusive to records of survey. Restated, there is no ‘applicable provision’ in 8764 to corner records. I would recommend that BPELSG staff modify 8764 to include corner records before including it in 464.”

Response to Comment (1):

This comment is unrelated to the amendments noticed for comment during the 15-day period. However, insofar as this comment pertains to the reference to “applicable provisions of Section 8764” in 464(a)(7), the Board accepts this comment and has modified 464(a)(7) to specifically include those provisions, from Section 8764, that would normally be applicable to the filing of a Corner Record.

Comment (2) – Email message, dated March 22, 2016, from Donna Fujihara, PLS, County Surveyor, Kern County Public Works Dept.:

Mrs. Fujihara requests that “section” be added to 464(a)(2) in front of “township” and that Sheet 1 of the form include enough space for the County Surveyor’s seal.

Response to Comment (2):

This comment is unrelated to the amendments noticed for comment during the 15-day period. However, the Board accepts this comment and has modified the language of 464(a)(2) to include the word “section.”

Comment (3) – Email message, dated March 23, 2016, from Greg Helmer, PLS:

Mr. Helmer provided comment related to the proposed revisions to Board Rule 464 and the Corner Record form as it applies to the optional use of California Coordinates and how the establishment of those values are mandated in Public Resources Code §§ 8801-8819 and §§ 8850-8902.

Response to Comment (3):

The majority of Mr. Helmer’s comments are unrelated to the amendments noticed for comment during the 15-day period. However, the Board accepts all of Mr. Helmer’s comments in concept and has revised the proposed language and form accordingly.

Additionally, at the March 3-4, 2016, Board meeting, the Board re-considered the following comment and adopted a new response:

(Original) Comment (3)

California Land Surveyors Association (CLSA): CLSA forwarded comment from its Legislative Committee related to inclusion of the language referencing Business and Professions Code section 8764 stating that the additional language directly referencing Section 8764 does not serve the purpose of interpreting statute more clearly because Section 8764 pertains to information to be included on a Record of Survey, not a Corner Record. They suggested that the Board remove the reference to Section 8764 and replace it with language that specifically relates to Corner Records.

(Original) Response to (Original) Comment (3)

The Board rejects this comment. Section 8765(d) provides an exemption from the requirement to file a Record of Survey as long as a Corner Record is filed. Section 8764 identifies information that, when applicable, needs to be shown on a Record of Survey to allow sufficient understanding of a monument's pedigree. It is appropriate that the applicable provisions of Section 8764 would be shown on the map that can be filed in lieu of a Record of Survey (i.e., a Corner Record). Just as the statute uses the phrase "applicable provisions" to allow the preparer to determine which information applies and must be included on a Record of Survey, the Board is using the same phrase for the same reason in Board Rule 464 regarding the preparation and filing of a Corner Record.

New Response to (Original) Comment (3)

After further consideration, the Board accepts this comment in concept and has revised the proposed language to include those provisions, from Section 8764, that would normally be applicable to the filing of a Corner Record.

Based on comments received and those accepted amendments were made and noticed for an additional 15-day public comment period on April 25, 2016. The comment period ended May 13, 2016. No comments were received during the second 15-day comment period.

Incorporation by Reference – 1 CCR 20

The amendments to the Corner Record document (BPELSG-2016), previously incorporated by reference, ensure that the information contained on the document is clear, concise, relevant, and necessary. If the document were incorporated into the CCR, it would increase the size of Division 5 and may cause confusion to the user as it's intended to be submitted to the appropriate county and not the Board. The Corner Record is available to the public and posted on the board's website.