

NDSPLS ADMINISTRATIVE OFFICE

PO Box 7370

Bismarck, ND 58507

Phone: 701-223-3184

E-mail: [info@ndspls.org](mailto:info@ndspls.org)

Website: [www.ndspls.org](http://www.ndspls.org)

Executive Secretary/Director of Administration  
North Dakota Public Service Commission  
600 E Blvd. Ave. Department 408  
Bismarck, North Dakota 58505-0480

February 11, 2023

**RE: Consideration to ensure that State Land Survey rules, laws, and codes are followed**

Dear Chair,

The North Dakota Society of Professional Land Surveyors (NDSPLS) encourages that all utility corridor easements within the State of North Dakota be "Strip Easements" not "Blanket Easements" for all utilities, such as, but not limited to, overhead and underground electrical lines and water, oil and gas pipelines.

Blanket type easements create needless servitudes, or non-appurtenant restrictions on the Grantor's use of real property over aliquot parts of a section where a strip easement would satisfy the easement need of the Grantee.

ND State Department of Trust Lands and Federal Lands do not allow for the use of blanket easements on their land holdings. Furthermore, practicing professional land surveyors follow these guidelines:

The State of North Dakota already has requirements codified for licensed Land Surveyors to follow under North Dakota Century Code (NDCC) 47-05-02.1.

Land Surveyors are bound by North Dakota Administrative Code (NDAC) 28-02.1-13-01: Survey Requirements for preparation of legal descriptions and conveyance of property.

Land Surveyors are bound by the North Dakota Attorney General Opinion 2017-L-03, dated May 12, 2017, indicating that pursuant to NDCC 43-19.1-30, the items which need to be included as exhibits relevant to documents or attachments, as well as when they are the main documents being recorded. These documents must include the signature and seal of a North Dakota registered professional land surveyor, even if the document is part of an exhibit or an attachment to the easement.

NDSPLS encourages the use of the North Dakota State Plane Coordinate System, per NDCC 47-20.2, as the base coordinate system used for a universal survey mapping system.

We are requesting the Public Service Commission to review all aspects of all utility easements and to ensure that all current laws and rules for easements in North Dakota are followed as part of the review and permit process.

Respectfully submitted,

North Dakota Society of Professional Land Surveyors

Enclosures: NDCC 47-05-02.1, Administrative Code Chapter 28-02.1-13-01, ND AG Opinion 2017-L-3, NDCC 43-19.1-30, NDCC 47-20.1 and NDCC 47-20.2

## **CHAPTER 28-02.1-13**

### **DOCUMENTS USED TO CONVEY REAL PROPERTY OR ANY INTEREST THEREIN**

#### **Section**

#### **28-02.1-13-01 Survey Requirements for Preparation of Legal Descriptions and Conveyance of Property**

##### **28-02.1-13-01. Survey requirements for preparation of legal descriptions and conveyance of property.**

Any registrant preparing a description, including without limitation a legal, property, or boundary description for, or assisting in the filing of, a document that will, or may, be used to convey or acquire real property or any interest therein, other than easements, including without limitation an auditor's plat, outlot, deed, or conveyance of rights of way, must conduct a survey of the property being conveyed and comply with all the requirements related thereto contained in North Dakota Century Code sections 40-50.1-01 and 40-50.1-02.

Preliminary descriptions and documents used for negotiations for real property, interests in real property, rights of way, and easements are not subject to the requirements of this chapter; however, all such preliminary documents must bear a statement that the document is preliminary, it does not represent a complete boundary survey, and the document is not intended for construction, recording, or implementation. The statement must appear prominently on the face of the preliminary document. Descriptions prepared by a registrant which are, or may be used to acquire or convey rights of way in which possession of title is obtained may be prepared without the setting of all exterior monuments if all four of the following requirements are met:

1. The rights of way are retraceable by using established monuments;
2. Exterior monuments are set wherever there is a change of width to the rights of way;
3. Exterior monuments are set wherever there is a change in direction of the rights of way other than changes of direction at section corners; and
4. Monuments are set at intersections of rights of way with section lines or section line rights of way.

Descriptions prepared by a registrant which are, or may be used to acquire or convey easements having a term of five years or more must be retraceable in each section of land over which the easement crosses by using established subdivision or public land survey system monuments existing or placed at the time of the easement conveyance.

**History:** Effective October 1, 2004; amended effective July 1, 2009; October 1, 2021.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-01, 43-19.1-08

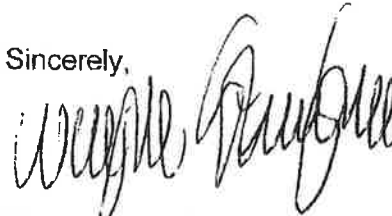
Recently, perhaps as the result of increased oil activity in the state, the North Dakota State Board of Registration for Professional Engineers and Land Surveyors became aware that some plats have been recorded, even though they did not include the signature and seal of a registered professional land surveyor. Some of these unsigned and unsealed survey plats were attached to easements as exhibits, with the plats providing land descriptions for the land covered by the easements.

The Board took its concern to the North Dakota County Recorders Association (Association). The response indicated that the Association felt N.D.C.C. § 43-19.1-30 did not apply to a map, plat, survey, or other land surveying document if it was filed or recorded as an exhibit or attachment to another document. The issue, therefore, is whether N.D.C.C. § 43-19.1-30 applies to the relevant documents when they are exhibits or attachments, as well as when they are the main documents being filed.

The plain language of N.D.C.C. § 43-19.1-30 states that it applies to "any map, plat, survey, or other document within the definition of land surveying." There is nothing to suggest that it applies only to the main document that is being filed and not to exhibits or attachments.

Therefore, it is my opinion that pursuant to N.D.C.C. § 43-19.1-30, a county recorder may not file or record a land surveying document unless it includes the personal signature and seal of a registered professional land surveyor, even if the document is just part of an exhibit or attachment.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wayne Stenehjem", written in a cursive style.

Wayne Stenehjem  
Attorney General

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.<sup>4</sup>

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<sup>4</sup> See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).

The Board has been made aware of at least some plats that have been recorded, despite the fact they did not include the signature and seal of a registered professional land surveyor, as required by N.D.C.C. § 43-19.1-30. These included unsigned and unsealed survey plats attached to easements as exhibits, which plats provided the land descriptions for the land covered by the easements.

As a result of this issue being brought to the attention of the Board, the Executive Director of the Board raised this issue with the North Dakota County Recorder Association. The response from the North Dakota County Recorder Association was that N.D.C.C. § 43-19.1-30 did not apply to a map, plat, survey or other land surveying document if it was filed or recorded as an attachment or exhibit to another document. Attached is a copy of an email from Cyndy Kolle Gustafson, as President of the North Dakota County Recorder Association noting the difference in position and suggesting that the Board seek an Attorney General Opinion.

A document is "filed or recorded" whether it is filed by itself, or as an exhibit of another document being filed or recorded (e.g. an easement, deed, etc.). There is no basis for an exception to N.D.C.C. § 43-19.1-30, for a map, plat, survey or other land surveying document, simply because it is attached to another document. The public policy reason to require this certification by a registered professional land surveyor is as important for a map, survey or plat that is filed as an exhibit to another document, as it is for a map, survey or plat filed alone. The reason for this requirement is to protect the public from a document that has not been prepared in accordance with the standards established by the Board and law for such work; and to identify for the public who performed the relevant work, and when the document was prepared.

N.D.C.C. § 43-19.1-30 is consistent with N.D.C.C. § 43-19.1-21, which requires final maps, plats, or other documents prepared by a registered land surveyor to be signed, dated, and stamped. N.D.C.C. § 43-19.1-21 further provides that an unfinished document must include a statement that it is not for recording purposes. Allowing an unsigned, and unsealed, map, plat, survey or other land surveying document to be attached as an exhibit to another document, and then recorded, would allow surveyors, and others, to circumvent the statutory requirements of N.D.C.C. § 43-19.1-21.

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Candie:

This list is just fine. Thank you for the information today.

It was interesting to hear the different interpretation of NDCC 43-19.1-30. As I stated in our telephone conversation, we recorders feel we are in compliance with this century code. I'm wondering if you have considered seeking an AG Opinion? This might be something to bring before your board.

Again, thank you for all your information. I will send you information about our 2016 convention after the first of the year.

*Cyndy J Kelle Gustafson*

Cyndy J Kelle Gustafson  
North Dakota County Recorder Association President  
Richland County Recorder  
418 2<sup>nd</sup> Ave N  
Wahpeton, North Dakota 58075  
701.642.7802  
701.642.7820 fax

We are providing this information under the open record laws and do not guarantee its sufficiency. This office takes no responsibility for accuracy, errors or omissions of documents.

Practice of land  
Surveying - 43-19.1-02  
Definition  
"Practice of  
land surveying"

## **CHAPTER 47-20.1**

### **SURVEY AND CORNER RECORDATION ACT**

#### **47-20.1-01. Purpose.**

It is the purpose of this chapter to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners, thereby providing for property security and a coherent system of property location and identification of ownerships, and thereby eliminating the repeated necessity for re-establishment and relocations of such corners where once they were established and located, and, to authorize any registered land surveyor to locate, erect, maintain, record and perpetuate landmarks, monuments, section corners, quarter corners, meander lines or boundary lines heretofore or hereafter established.

#### **47-20.1-02. Definitions.**

Except where the context indicates a different meaning, terms used in this chapter shall be defined as follows:

1. "Accessory corner" means any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal filled bottles, steel or wooden stakes or other objects.
2. "Corner", unless otherwise qualified, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.
3. "Monument" means an accessory that is presumed to occupy the exact position of a corner.
4. "Practice of land surveying" has the same meaning as in section 43-19.1-02.
5. "Property controlling corner" means a public land survey corner, or any property corner, which does not lie on a property line of the property in question, but which controls the location of one or more of the property corners of the property in question.
6. "Property corner" means a geographic point on the surface of the earth, and is on, a part of, and controls a property line.
7. "Public land survey corner" means any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for land to a private person from the United States government.
8. "Reference monument" means a special monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is recorded, and which serves to witness the corner.
9. "Registered land surveyor" means a surveyor who is registered to practice land surveying under chapter 43-19.1 regulating the registration and practice of professional engineering and land surveyors, or who is authorized under said chapter to practice land surveying as defined herein.

#### **47-20.1-03. Filing of corner record required.**

A surveyor shall complete, sign, stamp with the surveyor's seal and file with the recorder of the county where the corner is situated a written record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to such corner which is established, re-established, monumented, remonumented, restored, rehabilitated, perpetuated, or used as control in any survey by such surveyor, and within ninety days thereafter, unless the corner and its accessories are substantially as described in an existing corner record filed in accord with the provisions of this chapter.

#### **47-20.1-04. Filing permitted as to any property corner.**

A registered land surveyor may file such corner record as to any property corner, property controlling corner, reference monument, or accessory to a corner.

## **CHAPTER 47-20.2 PLANE COORDINATES**

### **47-20.2-01. North Dakota coordinate system zones defined.**

The systems of plane coordinates which have been established by the national oceanic and atmospheric administration national ocean survey/national geodetic survey or its successors for defining and stating the geographic positions or locations of points on the surface of the earth within this state are, as of July 1, 1989, to be known and designated as the North Dakota coordinate system of 1927 and the North Dakota coordinate system of 1983. For the purpose of the use of these systems, the state is divided into a north zone and a south zone:

1. The area now included in the following counties constitutes the north zone: Divide, Williams, McKenzie, Mountrail, Burke, Renville, Ward, McLean, Bottineau, McHenry, Sheridan, Pierce, Rolette, Towner, Benson, Wells, Foster, Eddy, Ramsey, Cavalier, Pembina, Walsh, Nelson, Grand Forks, Griggs, Steele, Traill.
2. The area now included in the following counties constitutes the south zone: Dunn, Golden Valley, Slope, Bowman, Adams, Hettinger, Stark, Mercer, Oliver, Morton, Grant, Sioux, Emmons, Burleigh, Kidder, Logan, McIntosh, Stutsman, Barnes, LaMoure, Dickey, Cass, Ransom, Sargent, Richland.

### **47-20.2-02. North Dakota coordinate system names defined.**

As established for use in the north zone, the North Dakota coordinate system of 1927 or the North Dakota coordinate system of 1983 is named, and in any land description in which it is used it must be designated the North Dakota coordinate system of 1927, north zone, or the North Dakota coordinate system of 1983, north zone. As established for use in the south zone, the North Dakota coordinate system of 1927 or the North Dakota coordinate system of 1983 is named, and in any land description in which it is used it must be designated the North Dakota coordinate system of 1927, south zone, or the North Dakota coordinate system of 1983, south zone.

### **47-20.2-03. North Dakota coordinate system defined.**

The plane coordinate values for a point on the earth's surface, used in expressing the geographic position or location of such point in the appropriate zone of this system, shall consist of two distances, expressed in United States survey feet [meters] and decimals of a foot [meter] when using the North Dakota coordinate system of 1927. One of these distances, to be known as the X-coordinate, shall give the position in an east-west direction; the other, to be known as the Y-coordinate, shall give the position in a north-south direction. These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the North American horizontal geodetic control network as published by the national ocean survey/national geodetic survey, or its successors, and the plane coordinates which have been computed on the systems defined in this chapter. Any such station may be used for establishing a survey connection to either North Dakota coordinate system. For the purposes of converting coordinates of the North Dakota coordinate system of 1983 from meters to feet, the international survey foot must be used. The conversion factor is: one foot equals 0.3048 meter exactly.

### **47-20.2-04. Federal and state coordinate description same tract - Federal precedence.**

Whenever coordinates based on the North Dakota coordinate system are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys, the description by coordinates must be construed as supplemental to the basic description of each subdivision, line, or corner contained in the official plats and field notes filed of record, and, in the event of any conflict, the description by reference to the subdivision, line, or corner of the United States public land surveys prevails over the description by coordinates, unless the coordinates are upheld by adjudication, at which time the coordinate description will prevail. This chapter does not require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the North

2. Coordinate values used in land descriptions under this section must be certified by a duly registered land surveyor under the laws of this state.

**47-20.2-07. Use of the term North Dakota coordinate system - Limitation.**

Repealed by S.L. 1989, ch. 555, § 7.

**47-20.2-08. Federal and state coordinates describing same tracts - Federal precedence.**

Repealed by S.L. 1989, ch. 555, § 7.

**47-20.2-09. Reliance on description of North Dakota coordinate system.**

Repealed by S.L. 1989, ch. 555, § 7.