



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: February 20, 2020

TIME: 2:33 PM

WSR 20-06-013

Agency: Department of Natural Resources

Original Notice

Supplemental Notice to WSR 19-17-004 & 19-22-078

Continuance of WSR

Preproposal Statement of Inquiry was filed as WSR 19-13-055 ; or

Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW \_\_\_\_\_.

Title of rule and other identifying information: (describe subject) WAC 332-120. Memorandum of Understanding for survey monument perpetuation during pavement preservation treatment projects, and clarification of existing requirements.

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
April 10, 2020	1:30 pm	DNR Tumwater Compound 801 – 88 <sup>th</sup> Avenue SE Tumwater, WA 98501-7019	Main Conference Room

Date of intended adoption: April 23, 2020 (Note: This is **NOT** the effective date)

### Submit written comments to:

Name: Patrick J. Beehler, PLS  
Address: 1111 Washington St. SE  
MS 47030  
Olympia, WA 98504-7030  
Email: pat.beehler@dnr.wa.gov  
Fax: 360 902-1778  
Other: 360 902-1181  
By (date) April 10, 2020

### Assistance for persons with disabilities:

Contact \_\_\_\_\_  
Phone:  
Fax:  
TTY:  
Email:  
Other:  
By (date) \_\_\_\_\_

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Creation of an MOU process for agencies conducting pavement preservation projects to allow a reasonable and cost effective way for agencies to be in compliance with RCW 58.24.040(8). Adds the requirement to comply with the applicable sections of the survey recording act, RCW 58.09. Adds definitions and clarifies existing language.

**Reasons supporting proposal:** Pavement preservation projects temporarily cover visible survey monuments in the road surface, but do not physically remove them. A pavement preservation project has limited impact on accessibility and use of survey monument positions. The MOU process will provide a cost savings to both the agencies and DNR.

**Statutory authority for adoption:** RCW 58.24.040(8)

**Statute being implemented:** RCW 58.24.040(8)

**Is rule necessary because of a:**

- Federal Law?  Yes  No  
Federal Court Decision?  Yes  No  
State Court Decision?  Yes  No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** (person or organization) Department of Natural Resources  Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Patrick J. Beehler, PLS	Natural Resources Building 1111 Washington St. SE Olympia, WA 98504-7030	360 902-1181
Implementation:	Bob R. Knuth, PLS	DNR Tumwater Compound 801 88 <sup>th</sup> Ave. SE, Tumwater, WA 98501-7019	360 902-1190
Enforcement:	Bob R. Knuth, PLS	DNR Tumwater Compound 801 88 <sup>th</sup> Ave. SE, Tumwater, WA 98501-7019	360 902-1190

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

- Yes: A preliminary cost-benefit analysis may be obtained by contacting:  
Name:  
Address:  
Phone:  
Fax:

TTY:  
Email:  
Other:

No: Please explain: A cost savings is anticipated due to the MOUs setting up reporting systems and not requiring monument removal permits.

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)  
(Internal government operations)

RCW 34.05.310 (4)(e)  
(Dictated by statute)

RCW 34.05.310 (4)(c)  
(Incorporation by reference)

RCW 34.05.310 (4)(f)  
(Set or adjust fees)

RCW 34.05.310 (4)(d)  
(Correct or clarify language)

RCW 34.05.310 (4)(g)  
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. \_\_\_\_\_

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

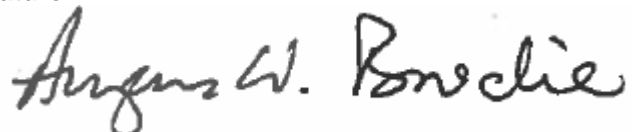
Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

Date: 2/13/2020

Name: Angus W. Brodie

Title: DNR Deputy Supervisor State Uplands

Signature:



AMENDATORY SECTION (Amending WSR 94-06-034, filed 2/25/94, effective 3/28/94)

**WAC 332-120-020 Definitions.** The following definitions shall apply to this chapter:

Covering: The physical covering of a survey monument such that the physical structure is no longer visible or readily accessible.

Department: The department of natural resources.

Engineer: Any person authorized to practice the profession of engineering under the provisions of chapter 18.43 RCW who also has authority to do land boundary surveying pursuant to RCW 36.75.110, 36.86.050, 47.36.010 or 58.09.090.

Geodetic control point: Points established to mark horizontal or vertical control positions that are part of the National Geodetic Survey Network.

Land boundary survey corner: A point on the boundary of any easement, right of way, lot, tract, or parcel of real property; a controlling point for a plat; or a point which is a General Land Office or Bureau of Land Management survey corner.

Land corner record: The record of corner information form as prescribed by the department of natural resources pursuant to chapter 58.09 RCW.

Land surveyor: Any person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW.

Local control point: Points established to mark horizontal or vertical control positions that are part of a permanent government control network other than the National Geodetic Survey network.

Parcel: A part or portion of real property including but not limited to GLO segregations, easements, rights of way, aliquot parts of sections or tracts.

Pavement preservation treatment: Asphalt light bituminous applications such as slurry, micro seal, cape and chip seal treatments that are typically less than 5/8 inch thick.

Removal or destruction: The physical disturbance (~~(or covering)~~) of a monument such that the (~~(survey point is)~~) physical structure no longer (~~(visible or readily accessible)~~) marks the location of the land boundary position.

Survey monument: The physical structure, along with any references or accessories thereto, used to mark the location of a land boundary survey corner, geodetic control point, or local control point.

Survey Recording Act: The law as established and designated in chapter 58.09 RCW.

AMENDATORY SECTION (Amending WSR 94-06-034, filed 2/25/94, effective 3/28/94)

**WAC 332-120-060 Project completion—Perpetuation of the original position.** (1) After completion of the activity that caused the removal or destruction of the monument, a land surveyor or engineer shall, unless specifically authorized otherwise:

(a) Reset a suitable monument at the original survey point or, if that is no longer feasible;

(b) Establish permanent witness monuments easily accessible from the original monument to perpetuate the position of the preexisting monument.

(2) Land boundary survey monumentation required by this chapter shall meet the requirements of the RCW 58.09.120 and 58.09.130.

(3) After completion of the remonumentation, the land surveyor or engineer shall complete the report form required by this chapter and forward it to the department.

(4) ~~((Additionally, after remonumenting any corner originally monumented by the GLO or BLM, a land corner record form shall also be filed with the county auditor as required by the Survey Recording Act.))~~ A record of survey or land corner record shall be completed as required by the Survey Recording Act to document the remonumentation in the public record.

#### NEW SECTION

**WAC 332-120-080 Survey monument preservation MOU for chip seal projects.** The purpose of this section is to cooperatively promote a reasonable method of land survey monument preservation throughout a pavement preservation treatment project in lieu of requiring an application for permit to remove or destroy a survey monument, per WAC 332-120-030.

(1) It is the responsibility of the licensed engineer, or their designee, in responsible charge of any pavement preservation project, which may cover existing visible survey monuments, to search for and identify any such survey monuments within the project limits.

(2) A state, county, or municipal agency conducting annual pavement preservation projects that cover existing survey monuments in the roadway may enter into an MOU with DNR which must include the following requirements:

(a) Annually, prior to the start date of planned pavement preservation projects, send notification to the department of planned projects for that year with road names and mileposts and/or beginning and ending intersections, including start date and expected date of completion;

(b) Acknowledgment of the agency's responsibility to ensure that all known survey monuments within the project area are located and protected;

(c) All monuments that were covered during a project shall be uncovered and made accessible after completion of annual activities; and

(d) The professional engineer in responsible charge of pavement preservation projects shall submit an annual letter to the department certifying that the affected monuments were uncovered.

(3) An agency which does not enter into an MOU under this section is required to submit a permit application following WAC 332-120-030 through 332-120-070 for any pavement preservation project that will cover a survey monument.