



Oregon

**State Board of Examiners for
Engineering & Land Surveying**

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LAW ENFORCEMENT COMMITTEE

Minutes of Meeting

June 3, 2008

Members Present:

Dan Linscheid, Chair

Ed Butts (Excused departure at noon)

Grant Davis

John Seward

Susan Newstetter

Staff Present:

Mari Lopez, Executive Secretary

Jenn Gilbert

James R. (JR) Wilkinson

Others Present:

Joanna Tucker-Davis, AAG

Tim Blackwood, PE

The meeting was called to order at 10:18 a.m. in the conference room of the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) office at 670 Hawthorne Ave. SE, Suite 220, Salem, OR 97301.

Chair Linscheid announced that prior to the meeting of the Law Enforcement Committee (LEC) an informal conference was conducted with Bernard A. Sutton regarding law enforcement case number 2488. The LEC and Sutton reached an understanding during the informal conference. **The LEC will discuss approving a settlement agreement during the July Board meeting.**

2488 – Bernard A. Sutton / Robert Hovden

The LEC met in an informal conference with Bernard A. Sutton, PLS, to discuss a Notice of Intent to Revoke Registration and to Assess a Civil Penalty of \$13,000. Sutton agreed the thirteen violations in the Notice of Intent were accurate due to his failure to submit records of survey for timely filing to the County Surveyor violating the Oregon Revised Statute (ORS) 209.250. Sutton agreed to not renew his license on June 30, 2008. Sutton also agreed to attend the Board meeting scheduled for July 8, 2008, and provide a list of all pending jobs with job numbers as of June 3, 2008. He is also to provide copies of letters to clients informing them that he will not be practicing land surveying after July 1, 2008. Finally, he is to provide proof that he has closed all pending jobs prior to July 1, 2008. The LEC made no promises regarding a final settlement agreement and whether a final settlement agreement is offered, or any terms of that

final agreement, is at the discretion of the Board. The LEC determined that the Assistant Attorney General should prepare a letter to Sutton to memorialize the discussions. **The Board to discuss final settlement agreement terms.**

Chair Linscheid also recognized Tim Blackwood, PE, who was in attendance to speak to the LEC regarding his review of case number 2406.

2406: Donald A. Rondema / Jim Wilkins

Tim Blackwood, PE, CEG, was introduced to the LEC as an approved expert reviewer who was requested to conduct an evaluation of law enforcement case number 2406. Blackwood acknowledged being acquainted with the respondent Donald A. Rondema, PE, and noted that his past dealings with Rondema were not as a client or source of work and did not present a conflict of interest. Blackwood distributed his report and discussed his findings. The complainant alleged that Rondema failed to follow the Rules of Professional Conduct, or exercise a standard of care, in designing a retaining wall that subsequently was involved in a landslide in Astoria, Oregon. Blackwood described many of the factors that contributed to the failure. The LEC discussed a professional's "standard of care" as it applies to geotechnical investigations including performing site reconnaissance, evaluating available and appropriate geotechnical maps, conducting subsurface explorations, and consulting with practitioners who are knowledgeable about the specific area of interest. Also discussed was the type of wall Rondema designed when compared to other designs as well as his instructions to the contractor and how those instructions were implemented. The LEC concluded its discussion by learning how the City of Astoria, Rondema, contractor, and others responded to mitigate the landslide. The LEC directed staff to prepare a case summary integrating Blackwood's findings for review during the August meeting.

2431 – Maud de Bel / Ace Consultants, Inc.

A preliminary investigation showed that Maud de Bel used the title of Senior Process Engineer to sign a November 2003 report regarding a possible energy conservation project at the City of Prineville waste water treatment facility. The report included process observations and calculations and a cost benefit analysis. At the time of the alleged violation, she was not registered with the Board. In an interview with City of Prineville staff, it was recollected that she did not represent herself as a professional engineer. However, the requested evidence has not been provided and the investigation was to continue. Further discussion will be held in August.

2436 – Seth M. Light / K.B. Boutwell

The LEC member Grant Davis declared a conflict of interest and excused himself. Seth Light, PE, had engineered a manufactured home foundation for Boutwell that later was found to be too large. The LEC discussed communication issues between the engineer and complainant. The LEC found that the mistake Light made was due to miscommunication between the parties and did not rise to a level of negligence or incompetence. **The LEC recommends closing the case as allegations unfounded.**

2453 – Marcela Alcantar / Elizabeth Moorhead

The investigation revealed that the original allegations regarding Marcela Alcantar misrepresenting herself as a professional engineer in two news articles were unfounded. The investigation found that the articles' authors misrepresented her qualifications. However in the course of investigation, new evidence showed that Alcantar submitted applications to the Oregon Office of Minority, Women, and Emerging Small Business with potential misrepresentations that need additional investigation. Mr. Wilkinson will work with the Assistant Attorney General to identify any violations. Further discussion will be held during the August meeting.

2464 – Gordon Snyder / OSBEELS

The LEC reviewed a memorandum that updated the investigation effort. Mr. Wilkinson requested additional documentation from the City of Springfield regarding the offering and the performance of engineering by Gordon Snyder as "RF Engineer" in support of a permit to construct a communications tower. The information is to resolve outstanding issues prior to a decision to issue a Notice of Intent. The documents for review have been archived by the City of Springfield and are inaccessible until retrieved. The investigator is to schedule access to the documents. Further discussion will be held in August.

2466 – Christopher Lidstone / OSBEELS

Christopher Lidstone, a Colorado consultant, prepared an evaluation of a permit application to extract aggregate material in Jackson County and made recommendations that appear to be the offering and/or performance of unlicensed engineering and geology. This is a concurrent investigation between the OSBEELS and the Oregon State Board of Geologist Examiners (OSBGE). The OSBGE is near completion of their investigation and in support of the concurrent investigation Mr. Wilkinson will contact the OSBGE for the results of their investigation. Further discussion will be held in August.

2474 – Darryl J. Anderson / Suzan & Clyde Burch

The LEC reviewed a memorandum that updated the investigation effort. The Burches claim that Darryl Anderson, PLS, entered their Christmas Valley property and set boundary monumentation without permission. Anderson believes the Burches may have mislocated their property and has retraced his survey. Once Anderson has located the Burch property, Mr. Wilkinson will meet at the property with the Burches, Anderson, and the Deschutes Deputy County Surveyor to review their complaint and field findings. The LEC agreed to continue the investigation.

2490 – Robert M. Butler / OSBEELS

The Board received an anonymous complaint regarding Robert M. Butler's use of PE on his business card when he was not registered with the Board. Butler distributed the card during a private business meeting. Additional investigation did not find other violations. After reviewing the evidence to proceed to a Notice of Intent, the LEC determined that the evidence lacked sufficient information to support a regulatory violation. **The LEC recommends closing the case as insufficient evidence.**

2491 – Mark S. Childs / OSBEELS

The Board received an anonymous complaint regarding Mark Child's use of PE on his business card when he is not registered with the Board. Childs distributed the card during a private

business meeting. Additional investigation did not find other violations. After reviewing the evidence to proceed to a Notice of Intent, the LEC determined that the evidence lacked sufficient information to support a regulatory violation. **The LEC recommends closing the case as insufficient evidence.**

New Business

Linscheid April 25 email: Linscheid submitted a Web Site for evaluation regarding mortgage surveys. The LEC discussed that a Vancouver, WA, firm advertised that they do not establish property corners or property lines, but offered a mortgage company “proof that the major improvements on the property are free of encroachments.” The members noted that a professional land surveyor would need to first establish a line between boundary monuments in order to make that representation. The Web Site does not indicate whether the firm employs an Oregon registrant. The LEC determined to open a law enforcement case.

Butts April 29 email: The LEC member Ed Butts provided for evaluation an unsolicited email that offered engineering services. Nahak Overseas Limited offered basic and detailed engineering and surveying services, but is located in India. The LEC observed that the ORS 672.020(1) states “no person shall practice or offer to practice engineering in this state unless the person is registered and has a valid certificate to practice engineering issued under ORS 672.002 to 672.325.” However, the LEC acknowledged the difficulty of sanctioning people overseas for the unlawful offering of professional services. No further action.

Butts May 5 email: The LEC member Ed Butts provided an email for evaluation describing inquiries he had received from two different people. The discussions regarded a firm in an EPA/Oregon Health Division program that is providing technical service and advice to community water systems with a population under 10,000 and using surface water. There are allegations that the firm may be soliciting engineering projects in violation of the contract. Separate from the contract allegations, the LEC observed that the firm may be in violation of the Rules of Professional Conduct regarding a conflict of interest. The LEC determined to open a law enforcement case with the OSBEELS as the complainant.

Discussion topic not on agenda: The LEC member Ed Butts discussed a personnel issue that arose regarding a former employee who moonlighted for a client. When the employee left his firm, the client and others followed the employee. The LEC observed that it appeared to be a violation of the Rules of Professional Conduct for the employee to engage in moonlighting activities “that could influence their judgment or the quality of their services.” There also may be violations of the Oregon Administrative Rule 820-010-0720 that prohibit performing services unless the firm has a “full-time partner, manager, officer, or employee.” The LEC determined to open a law enforcement case upon receipt of a formal complaint from Mr. Butts.

Discussion topic not on agenda: The LEC discussed an Assistant Attorney General memorandum of September 8, 2005. The memorandum presented the definitions of negligence, gross negligence, and incompetence. The LEC discussed the differences and noted that prudent people make mistakes, but a mistake by itself does not rise to level of negligence unless there is a pattern of ignoring care of the client’s interest.

Continuing Professional Development Audit: The Board recently completed a random audit of registrants for compliance to the continuing professional development requirements set forth in the OAR 820-010-0635 and the OAR 820-015-0026. The audit response deadline was March 17, 2008. The audit resulted in over twenty registrants being identified for law enforcement cases. According to the OAR 820-015-0026, an individual found in violation will face a suspension of their professional registration(s). One group of registrants has failed to provide the Board with a change of address notification within 30-days of any address change. Notice of the audit and subsequent reminder were returned to the Board. The OAR 820-010-0605 states, “certified mail to the registrant’s last address on file with the Board shall constitute service.” A Notice of Intent to Suspend will be sent to the last address on file. Another group received the audit notice, but failed to respond to the audit. The last group responded to the audit with documentation, but failed to respond to the second request for further verification. The LEC discussed the grace periods offered registrants in the OAR 820-015-0026(2) and (3) and observed that some persons may qualify. However, each registrant’s case is unique and needs to be evaluated on a case-by-case basis. The LEC determined to have memorandums prepared for each registrant to identify the particulars for the LEC to review at its August meeting. The LEC recommends a registration suspension of two years for violating the OAR 820-015-0026. The LEC determined to forward the recommendation to the Rules and Regulations Committee for consideration.

Discussion topic not on agenda: In a related matter, staff noted that law enforcement case number 2502 was opened against Steven Syrcle, PE, involving his response to an audit request. Upon further evaluation, Syrcle was afforded the grace period under the OAR 820-015-0026(3) and was removed as an open case. Case number 2502 will be reused.

Clifford Paul memorandum: Paul notified the Board that he had been subject to disciplinary action by the registration boards of Arizona, Oklahoma, and Colorado. The OAR 820-020-0045(4) requires, “An applicant or registrant must give written notification to the Board of any disciplinary action or sanction related to the practice of engineering, land surveying, or photogrammetric mapping imposed by any licensing agency immediately upon receiving notice of the action or sanction.” The LEC noted that the original violation involved an exempt structure, which was not a violation of the Board’s rules. However, Paul failed to immediately notify the Board. The LEC discussed “immediately” and noted a rule change should be specific about the term. The LEC observed that Paul was forthcoming within ten months of the Colorado action. The LEC recommended no action. The LEC determined to forward a request to clarify “immediately” to the Rules and Regulations Committee for consideration.

Unfinished Business

2396-Nelson & 2397-Cooley: The LEC was updated on meetings conducted with the complainant Doug Spencer, PE, and respondent Steven Cooley, PE. Additional meetings were scheduled with the respondent Catherine Nelson, PE, and a third party Ed Fischer, PE. The informal meetings were fact-finding discussions regarding the Oregon Department of Transportation (ODOT) response to the allegations. One core issue involved the ODOT policy for the document stamping requirements for registered engineers and land surveyors. The group also discussed the stamping and management of standard drawings and project special

provisions. The LEC determined that staff should prepare case summaries to be reviewed during the LEC meeting in August.

LEC Policy, Disciplinary Procedures, Expert Reviewer Policy, and Recording Policy: The LEC continued their discussion regarding the various policies that guide the Board's law enforcement activities. A revised flow chart also was provided for discussion. After noting some typographic errors, the LEC determined that the review of the policies is complete. **The LEC recommends approval of the LEC policies.**

2454 – Carter Case: To settle law enforcement case number 2454, Case signed a settlement agreement requiring him to pay a \$1,000 civil penalty in two monthly payments of \$500. Case engaged in the unlicensed practice of engineering when he removed a PE seal from an engineered drawing and provided the drawing to his client. He was required to submit a payment on April 1, 2008, but paid on May 6, 2008. The second payment had not been received. The LEC discussed collection options and determined staff is to follow-up with Case.

2471 – Mark Chandler: To settle law enforcement case number 2471, Chandler signed a settlement agreement that required him to submit a comity application by May 31, 2008. On May 29, 2008, the Board received his comity application and fee for naval architecture and marine engineering. Chandler had been registered with the Board as a PE especially qualified in naval architecture and marine engineering and had allowed it to lapse. He then used his Washington State seal on an engineering report provided for an Oregon client. **The LEC recommends that compliance has been met and to close the case.**

Settlement Agreement Monitoring:

LEC Cases Subject to Monitoring and LEC Cases Subject to Collections: The LEC reviewed the LEC Cases Subject to Monitoring and the LEC Cases Subject to Collections and offered no comments other than to inquiry of 2462-Burton.

Staff reported that Mr. Burton has been submitting regular payments as per the settlement agreement.

Case Status Report:

The Committee briefly reviewed the case status list.

The meeting adjourned at approximately 2:45 p.m.