



# Oregon

STATE BOARD OF EXAMINERS  
FOR ENGINEERING &  
LAND SURVEYING

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LAW ENFORCEMENT COMMITTEE  
Minutes of Meeting  
June 9, 2016

Members present:

Bill Boyd, Chair  
Jason Kent  
Dave Van Dyke (Excused)  
Ron Singh

Staff present:

Mari Lopez, Board Administrator  
Jenn Gilbert, Executive Assistant  
Amelia Volker, Account Specialist  
Tina Sorenson, Account Specialist  
Lisa Montellano, Investigator  
James R. (JR) Wilkinson, Investigator  
Christina Ulberg, Investigator

Others present:

Katharine Lozano, Assistant Attorney General  
Monica Anderson, PE  
Karianne Conway, Attorney  
Terry Armentrout  
Steve Pilkerton, OSU Research Forester  
Timothy Kent, PLS

The meeting of the Law Enforcement Committee (LEC) was called to order at 8:05 a.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301.

**Public Comment**

There was no public comment.

**Case Status Report**

No comments were offered.

**Discussion on Monitoring and Collections:**

LEC Cases Subject to Monitoring/Collections (already sent to Department of Revenue (DOR) and were returned as uncollectable – case no., name, residency, license status, LEC action)

### Audit on Collection Efforts

Volker reviewed a list of cases regarding Board efforts to collect civil penalties. She explained the various challenges to collect, including bad addresses and out of state debtors. Assistant Attorney General (AAG) Lozano reminded the LEC that her paralegal is providing contact information as it becomes available. Lopez noted that the LEC needed to provide guidance on three cases because the individuals have filed for bankruptcy: #2496 – Robert Demers; #2819 – Scott Ogren; and, #2851 – Scott Ogren. AAG Lozano explained two options. The first is to write them off once they are declared bankrupt. The other is to file proofs of claim on all of them. If proofs of claim are filed: for the Chapter 7 individuals, the Board could resume collections once the bankruptcy is closed; for Chapter 13 individuals, if the Board does not receive any moneys from disposition of assets in the bankruptcy, then the debt can be written off.

Wilkinson informed the LEC that Ogren called and wanted to resolve his matters. He offered to begin making payments. He is registered in Washington State and has maintained his continuing professional development. Lopez observed that he filed under Chapter 13. After some discussion, AAG Lozano reiterated that the Board could file a proof of claim in Mr. Ogren's bankruptcy, if that window has not closed, but could enter a separate agreement with Mr. Ogren, which would not, however, likely be enforceable once the bankruptcy closes. So it should be structured to be completed before that time. Kent questioned whether the Board could file proofs of claim and also enter into agreements. He noted that Ogren would be making payments for over two years under the terms he was requesting. AAG Lozano replied that the LEC also would need to determine whether he should have his license reactivated during that period. She added the time had passed for him to enter into a settlement agreement in his contested case that would have provided for a payment plan to be built in to his order.

Boyd stated that Ogren wants to get relicensed and pay off the debt then the Board has some say before the debt is discharged. Kent agreed and noted the Board can work with Ogren. It was moved and seconded (Boyd/Kent) to file proofs of claim on the three cases. The motion passed unanimously. It was moved and seconded (Boyd/Kent) for staff to negotiate a \$250 per month payment plan with Ogren. The motion was amended and accepted to not issue his registration during his payment period, which would include the added interest. The motion passed unanimously.

The LEC also discussed Demers who filed Chapter 7. AAG Lozano suggested filing a proof of claim because his civil penalty will not be discharged. The Board could then pursue payment after the bankruptcy closed, even if they were not paid any of the civil penalty through the bankruptcy judgement. Rather than dealing with each bankrupt debtor case on a case-by-case basis, however, she suggested developing a policy to guide staff, with direction for a process to deal with Chapter 7 bankruptcy debtors, and direction for a process to deal with Chapter 13 bankruptcy debtors. Volker informed the LEC that Department of Revenue (DOR) will return collection accounts to the Board after they have tried to collect on civil penalty for a year without success, and will also return collection accounts of individuals who declare bankruptcy. She also explained that DOR will collect on the oldest debts first. It was moved and seconded (Boyd/Jason) that after Chapter 7 closes the debt, the collection effort be resubmitted to DOR. Kent cautioned that the guidance does not resolve the reactivation of registration or other considerations. That would be case specific. The motion passed unanimously.

## **Informal Conferences**

### **2955 - Monica Anderson**

Monica Anderson met in an informal conference with the LEC and was represented by attorney Karianne Conway. Anderson is the president and principle engineer of BHE Group (formerly known as Balzhiser & Hubbard Engineers, Inc). Conway discussed the allegations against Anderson for making untruthful statements by advertising a BHE Group office at the Congress Center in Portland when they do not have a licensed professional working at least half time at that location. Conway argued that the Regus Group lease agreement, which provided Anderson an office space in Portland, proves that they have an office and she stated that the company's name is on the door; she also said they feel that OAR 820-010-0720 is not clear in regards to the amount of time staff must be present. Conway went on to say that Anderson claims to have contacted OSBEELS staff at the time they initially leased the Congress Center space to inquire about whether they could advertise an unstaffed office. Anderson says she was told that this was allowable, but did not have any record of who she spoke to. Conway alleged that confusion arose from the investigation because the receptionist at the Congress Center was only asked about BHE Group and because the company recently changed their name, the receptionist was unfamiliar with the company's new name. Conway also offered that the Portland location was removed from BHE Group's website in an attempt at compliance and requested that the LEC dismiss the Notice of Intent, close the case and issue a letter of concern to BHE Group as well as providing clarification of the intent of the rule (OAR 820-010-0720).

Anderson then spoke about how BHE Group opened an office in Portland and reiterated her claim of contacting an OSBEELS staff member, who she alleges advised her it was allowable to advertise an unstaffed office. Kent asked Anderson the name of the staff person she claims to have spoken with, but she was unable to give one. Anderson then asked the LEC why they felt BHE Group did not have an office in Portland? She also reiterated that it was her understanding that the investigator (Montellano) approached a single receptionist at the Congress Center and inquired only about BHE Group, thus causing confusion because the company had changed their name. At this point Montellano explained that there did not appear to be any confusion with the receptionists when she visited the Congress Center to investigate BHE Group. She stated that there were two Regus Group staff members at the reception desk in Suite 1100 at the Congress Center when she arrived to conduct an interview with BHE Group staff. At that time, Montellano stated that when the receptionists seemed unfamiliar with a company named BHE Group, she inquired about Balzhiser & Hubbard Engineers, Inc. and they were still unaware of the company. Montellano described how one of the receptionists looked up BHE Group on the internet and was going to call the company's office in an attempt to figure out who they were.

**The Committee exited its public meeting pursuant to Oregon Revised Statute (ORS) 192.690(1) for private deliberation on a contested case. All members of the audience were asked to leave the room for these deliberations and were invited to return upon resumption of the public meeting. Upon returning to public meeting, it was announced that no decisions were made and no votes were taken.**

It was moved and seconded (Singh/Kent) to withdraw the Notice of Intent as compliance met and issue a letter of concern. The motion passed unanimously. Kent explained to Anderson and

Conway that the LEC will be recommending to the Board that they dismiss the Notice of Intent as compliance met because they are no longer advertising an office in Portland and thus are in compliance with the administrative rule. Kent also explained that the LEC feels that OAR 820-010-0720 and OAR 820-020-0025(1) are tied together and it is clear that BHE Group does not have a full time officer or partner in the office during that person's working time (current rule), or company business hours (pending proposed rule). He also stated that the rule is currently under revision in an attempt to clarify the Board's intent.

#### 2966 – Terry Armentrout

Terry Armentrout met in an informal conference with the LEC in regards to allegations of non-compliance with a Continuing Professional Development (CPD) audit and failure to cooperate with the Board. Armentrout began by stating that he feels the allegation that he was uncooperative with the Board is inaccurate – in his opinion he feels that he did cooperate. He also said that he has no interest in being a registered professional engineer in Oregon and that the only time he activated his Oregon license was when “special projects” came up. Armentrout referred to an email dated July 2015 in which he responded to a request for verification of his CPD by telling the Accounts Dept. that, “You have all of the information that I have, I have no more.” Armentrout admitted that he did not comply because he had no further information to provide.

Armentrout then referred to his OSBEELS license history report which shows there were seven times his license became delinquent. He stated that the reason his license went delinquent was because he had no intention of being a professional registered engineer. He stated that people would ask him to assist with “special projects” and he said they would pay for his registration so that he could perform the job. One of his first projects was reviewing whether a friend's dust control system met city code requirements. He then stated that he spent his entire career as an engineer for the Army Corps of Engineers. At the time of his retirement from the Army Corps in February 2006, Armentrout was a member of the Board of Directors for The Dalles Civic Auditorium (a 501(C)(3) company). A grant was received on behalf of the Civic Auditorium, but the grant required some work performed by a professional engineer – Armentrout volunteered his services and performed the engineering work.

Armentrout then described that he was approached by a neighbor who was attempting to build his own drafting business. The neighbor had some drawings that he needed an engineer to review, sign off on and do the renovations for Kramer's Market in Dufur, Oregon. The market owner was trying to renovate the building and Armentrout engineered the roof trusses and wrote specifications for steel material.

A former co-worker of Armentrout's from the Army Corps of Engineers was on the Board of Directors for the Wonder Works Children's Museum in the The Dalles. The museum found an old office building to move into, but the roof of the building was rotten. They needed an engineer to do the engineering for a 10 foot section of beam that supported the roof and sign off on it, which Armentrout did for them.

Kent inquired whether Armentrout had applied to renew his registration for the next biennial period. Armentrout says he did not, and he did not intend to apply for any registration periods

except for people asking him to perform these projects. Chair Boyd asked if Armentrout obtained the continuing education that is required to maintain a license. Armentrout stated that he did, but since his intention was not to renew his license he did not pay attention to the documentation. AAG Lozano asked why he was doing his CPD requirements if he had no intention of maintaining his registration and Armentrout said they were civic tasks that he could contribute to, to which AAG Lozano asked if he was implying that the projects he worked on were his CPD? Armentrout said no. Armentrout said that he did continuing education, but not for the purpose of registration.

Kent brought up the mentoring/teaching Portland Christian School (PCS) that Armentrout listed on his CPD Organization Form. Armentrout stated that it is more likely that he spent 400 hours working with PCS students. Kent asked if Armentrout has kept up on his CPD requirements for past renewal periods and Armentrout stated that he is a lifelong learner and has always kept up on continuing education. Kent reminded him that CPD documentation is a requirement of having a license and Armentrout did not dispute that.

AAG Lozano asked if Armentrout has a request of the LEC in regards to a settlement agreement. Armentrout stated that he agrees with the allegation that he did not document the required amount of CPD, but does not agree that he failed to cooperate with the Board during the audit and investigation of his CPD. He said that the reason he has renewed his license is because he has performed small jobs that required a license, but it was never his intention to make a living, or even a substantial amount of money as a licensed engineer. Armentrout said taking these two things into effect, he recommended a penalty similar to what was imposed on Francisco J. Silva (case# 2833) in which Silva agreed to retire his license permanently. Armentrout offered to permanently retire his professional engineering license in lieu of suspension and the \$2,000 civil penalty. Chair Boyd explained that the CPD requirements are designed to ensure public safety in engineering practice regardless of whether money is earned from the project. Armentrout responded by saying that replacing a 12 foot simply supported beam is not new technology, and that reviewing a dust control program to see if it meets requirements for dust control is a simple project. He will help by doing civic work that requires engineering to ensure compliance with the grantor's needs or will help the City of Dufur with their fire station which is also simple work and not state-of-the-art. Kent asked Armentrout if he understands that retiring his license would prevent him to perform any of this work. Armentrout stated that he does not need to do this work. AAG Lozano further explained that this includes volunteer work and Armentrout stated that he understood.

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The public meeting reconvened and Chair Boyd asked permission to make copies of the projects Armentrout brought to the informal conference with him. Armentrout gave permission. Kent inquired about the Six Sigma Black Belt courses listed on Armentrout's CPD Organization Forms dated 2009 and 2013. Kent asked if the class was taken twice or if it was one class listed on both

forms. Armentrout stated that he most likely listed the one class two times. Kent asked Armentrout if he was familiar with OAR 820-010-0635 regarding CPD requirements and reminded him that as a registrant he is obligated to know the rules. Kent asked when Armentrout attended the Six Sigma Black Belt course and Armentrout stated that he would have to look it up. Kent asked how he would look it up; does he have documentation at home? Armentrout stated that he may or may not. Kent reminded Armentrout that this is what was originally asked of him and Armentrout stated that he does not have the documentation.

Kent also explained that Montellano asked Armentrout to sign a release and she was willing to obtain the documentation on his behalf but he did not respond. Armentrout agreed that he did not respond because he says he does have the documentation. Kent again explained that with a signed release Armentrout would not have to have the documentation because OSBEELS would be willing to obtain the documentation on his behalf directly from the source; Armentrout simply repeated that he does not have the documentation. Kent explained the audit process and that staff were trying to assist him in obtaining the necessary documentation. Montellano asked Armentrout if the documentation exists and Armentrout stated that he doesn't know. Kent asked if he attended the Six Sigma Black Belt course and Armentrout stated that he did, so Kent asked why he will not cooperate with obtaining the documentation? Armentrout asserted that he is cooperating. Chair Boyd said the LEC feels Armentrout is not cooperating with the CPD audit. It was moved and seconded (Kent/ Boyd) to recommend maintaining both violations, with settlement of \$1,000 civil penalty and acceptance permanent retirement of Armentrout's license. The motion passed unanimously. After some personal deliberation, Armentrout agreed.

It was moved and seconded (Kent/Boyd) that a new case be opened on Armentrout, for two potential violations: untruthful statements related to Armentrout's claims of the CPD he obtained, and one for unlicensed practice of structural engineering (OAR 820-020-0025(1)). Chair Boyd instructed staff to transcribe the recording of the meeting. The motion passed unanimously.

### **Cases Subject to OAR 820-015-0060**

#### **2876 – Marvin S. Krush**

Wilkinson informed that LEC that they authorized issuing a NOI. However, while drafting the NOI a question arose about Krush's use of wooden hubs as a monument. Does this trigger the 45-day filing requirement under ORS 205.250(1)? Based on her contacts with the surveyor members of the Board, AAG Lozano explained that wooden hubs do not appear to be a monument as defined under ORS 209.005(5).<sup>1</sup> Therefore, setting a wooden hub would not trigger the 45-day filing requirement. She recommended that the LEC remove that allegation in an Amended NOI.

Singh asked about ORS 672.047(7).<sup>2</sup> He stated that a wooden hub on private property should be able to remain on the land because hubs are not typically above ground. Hubs are set at or below

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<sup>1</sup> ORS 209.205(5), "Monument" means any permanent material object or collection of objects, either natural or man-made, that indicates the position on the ground of a survey station, public land survey corner or accessories, or a land boundary corner established by a qualified surveyor.

<sup>2</sup> ORS 672.047(7), The land surveyor shall remove all flagging, stakes and other temporary materials that are above ground if leaving the materials in place creates an unreasonable risk of harm to persons or property. Except for

ground level. Kent added that it's not easy to remove hubs. Singh noted his ODOT crews will remove the identifying stakes, but not hubs. AAG Lozano commented that the statute specifically requires removal of "above ground" materials, so if the hubs are not above ground, they would not need to be removed. Kent observed that hubs are not monuments. AAG Lozano reiterated that there seems to be some agreement on that from the Board's surveyors, which means the 45-day filing requirement would not be triggered by setting them. She also reiterated that, furthermore, if a hub is not "above ground" then there is no removal requirement under ORS 672.047(7). Singh clarified, however, that if a hub is above ground then it must be removed per ORS 672.047(7). Kent added that frost-jacking can cause hubs to pop-up out of the ground, so the removal requirement would be limited to the duration of the survey, not to subsequent events outside the surveyor's control that might cause a hub to go from below ground surface to above it. It was moved and seconded (Kent/Boyd) to amend the Notice by removing two instances of failing to comply with the 45 day filing rule, thus reducing the civil penalty to \$7,000, but retaining the revocation of his professional land surveying registration for the remaining violations. The motion passed unanimously.

#### 2912 – Thomson Rockwood

Wilkinson introduced the case by stating the complainant, Jon Proud, PLS, submitted a series of complaints against individuals involved with the construction of a roadway above his home. By way of background, Thomson Rockwood, PE, owns the upper property and is a mechanical engineer who prepared and submitted original documentation for a "non-engineered grading permit" to Jackson County. Once construction began, Proud expressed concerns about its construction, including the flooding of a neighbor's garage. Jackson County questioned Rockwood's qualifications. Thereafter, Rockwood hired Timothy Bossard, PE, as the project manager. James Heck, PE, and Lawrence Kleypas, PLS, assisted on the project. As a result of Proud's complaints, separate cases were opened.

AAG Lozano stated that Rockwood did not admit in a letter to not being competent, as the investigative report suggested; he admitted to not being an expert. He only admitted to lacking expertise in this area, not to lacking competence. She would need a qualified professional engineer to determine whether Rockwood was incompetent; a charge of incompetence could not stand on Rockwood's statement about lacking expertise. She added that his admission was not as important as the work he completed. Was his *work* competent?

One of Proud's concerns was that Rockwood used 15 degrees of slope in his calculations rather than percent of slope. This made the 15 degree slope appear less steep than its percent of slope equivalent (15 degrees = 26.8%). Jackson County Land Development Ordinance set 20% as triggering its steep slope standards. The LEC discussed that it was unconventional to use degrees. Wilkinson illustrated where Rockwood used it in his calculations, so it was visible to the County's reviewers. Upon review, the LEC determined that it did not show incompetence or untruthfulness.

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forestland as defined in ORS 527.620, the land surveyor shall remove all temporary above ground materials within 60 days of placement unless written authorization to leave the materials in place is received from the landowner or occupant.

AAG Lozano returned the discussion to Rockwood's design work. Kent commented that, despite Rockwood's assertions, he engaged in road design and road design requires an engineer. Rockwood did some work, then problems arose and the county required him to hire a geotechnical engineer, so Rockwood then hired Bossard. Wilkinson highlighted a letter Bossard wrote regarding the project when he took over, generally approving it except for a few minor alterations, wondering if that meant Bossard was incompetent or negligent, as was suggested in the complaint. AAG Lozano stated there is a need to review Rockwood's work before evaluating Bossard's work. Only if the Rockwood work was incompetent would it be appropriate to investigate Bossard for approving it.

Wilkinson observed that Jackson County did not require engineering for that type of permit. AAG Lozano replied that a permit may not require engineer, but it does not mean that engineering did not take place. Only the work can reveal whether it was engineering, and if so, whether it was competent engineering. Wilkinson added that there was an old existing road that needed to be refurbished. Rockwood eventually wanted to build two homes at the end of the hammerhead road, but the immediate goal was to gain access to the property to remove fire fuel. The old road was already in place and no structures were on the property. Rockwood had his contractor begin by grubbing the road.

Kent commented that some of the work Rockwood engaged in was engineering. In response to a question about whether it was competent, Kent replied that a geotechnical engineer should have been utilized. Rockwood should have engaged one as the engineer in responsible charge. He was unsure where to draw a line between Rockwood and Bossard. Wilkinson commented that when Proud's geotechnical engineer walked the road and prepared his report, it was prior to Bossard being hired. The standards for the non-engineered grading permit did not require engineering because no houses were being constructed. Rockwood committed to meeting those standards when that happened. Kent commented that the permit requirement is not important because the rules regarding a professional engineer's work apply regardless of permit parameters.

AAG Lozano refocused the discussion on the engineering elements. Kent remarked that design calculations, geotechnical reports, fill design, and other factors are important, including geotechnical and construction inspections. Lopez recalled that a geologist was involved, Geoffrey Garcia, RG. Wilkinson replied that the Joint Compliance Committee (JCC) reviewed his activities on October 2, 2014, and determined that the Oregon State Board of Geologist Examiners (OSBGE) would be the lead board to investigate Garcia. They requested information from him, but it was found lacking and opened a case.<sup>3</sup>

Did Rockwood do any geotechnical engineering? Wilkinson scrolled through the documents Rockwood submitted to Jackson County. Kent commented that they did not demonstrate the practice of geotechnical engineering, but, nevertheless, they were engineering documents prepared by a registrant. He noted there was only one cross section. AAG Lozano asked, are these documents the practice of engineering? Kent replied that it appeared to be Rockwood's intent. However, the grading calculations are grossly insufficient for volume estimates and there is no geotechnical engineering report. Is the absence of the geotechnical engineering for the fill

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<sup>3</sup> The Boards subsequently received information that Garcia passed away on May 17, 2015.

slopes a problem? Kent noted that was one of several problems. Another was the stability of cut slopes. He did not see that analysis in Rockwood's submittals.

In response to a question about the timeline, Wilkinson explained that Rockwood secured the non-engineered grading permit in March 2012. His application showed a cut volume of 470 cubic yards. Rockwood also hired a contractor who began following and grubbing the old roadway. Grading work was being done at the same time. By July 2012 Bossard became involved and he conducted a review. Work under the original permit was suspended in December 2012. A May 2013 permit application listed Bossard as the design professional. He submitted sealed and signed design sheets showing a cut volume of 3,953 cubic yards.

AAG Lozano asked whether the Rockwood design represents work below the minimum standards for competence, or simply a failure to follow best practices. Wilkinson contrasted that with the non-engineered permit requirements. Kent noted that Rockwood received a "non-engineered" permit when his intent was to gain access to develop two home sites. While Rockwood committed to eventually meeting those standards, it seemed misleading. Kent also expressed concern at the same time about the Board setting roadway design standards. They are administered by a local jurisdiction.

After further discussion, Lopez asked if a professional reviewer was needed. Kent commented that he has experience in roadway design, but was not an expert. He then itemized subjects he thought were missing from Rockwood's design documents. The photographs also revealed some problems, including organics in the fill. He thought the standard of care was not met at several points. The LEC determined that a professional reviewer was needed.

#### 2913 – Timothy Bossard

This case is related to the Rockwood case. Wilkinson explained that the Jackson County Building Official required Rockwood to assert his expertise, but when Rockwood was unable to do, the County required he have someone with expertise on the job. To relieve any concerns the County might have, Rockwood hired Timothy Bossard, PE. AAG Lozano pointed out that a building official may require a specialist to prepare designs, regardless of the original design professional's personal competence.. Kent observed Bossard wrote a letter regarding the Rockwood design and reached certain conclusions about the road meeting County minimum access design standards. The discussion turned to what Rockwood work Bossard certified. They are explicitly tied together. The LEC determined that a professional reviewer was needed. AAG Lozano reminded the committee and staff that Rockwood's work should be examined first to inform the discussion on Bossard.

#### 2914 – James Heck

This case also is related to Rockwood and Bossard. Wilkinson explained that Bossard traveled to Hawaii and needed a professional engineer to inspect the road during his extended absence. James B. Heck, PE, made three inspections, but did not seal and sign his inspection reports as alleged by the complainant. Further investigation revealed that Heck only communicated with Bossard, he directly invoiced Bossard, and he had no contact with the client. AAG Lozano noted that "inspection" is a term of art in the building trade. Boyd responded that an owner hires an engineer to participate in the construction process to ensure that it is constructed per the plan.

This type of inspection is different than signing off on permitted construction. The question was rephrased, is this engineering?

Lopez observed that OSBEELS rules are silent on requirements for construction supervision by engineers. Kent stated that construction inspection does not necessarily require professional licensure since technicians can conduct inspections. He reviewed Heck's response wherein Heck stated his work was done under Bossard's supervision. AAG Lozano asked the members to review a Heck report. Kent stated that a technician could have prepared the report. Boyd remarked that a non-engineer can inspect. Kent agreed stating construction inspectors who are not engineers can write a report that contains everything Heck documented. He added that Heck was not the engineer in responsible charge. He was only offering his observations about construction at that point in time. It was move and seconded (Kent/Boyd) to close the case as allegations unfounded. The motion passed unanimously.

#### 2915 – Lawrence Kleypas

This case also is related to Rockwood and Bossard. Wilkinson explained that Lawrence Kleypas, PLS, prepared for Rockwood a Grant of Easement and a Map of Easement that he failed to seal and sign. Both are final documents. When Kleypas responded to the allegations he admitted to the mistake and pled "no contest." Finding there was a violation the LEC reviewed the civil penalty factors. Singh noted that professional land surveyors at ODOT seal and sign easement documents. Upon review there were no factors that were egregious enough to warrant a civil penalty. However, it was moved and seconded (Boyd/Kent) to issue a letter of reprimand. Kent acknowledged that license discipline is harsh because it's reportable. Since a letter of reprimand is discipline, AAG Lozano stated that a NOI would be issued and Kleypas would have the same ability to request an informal conference as any respondent to attempt to settle for a different outcome. Singh was unsure where the document came from. The Map of Easement shows a seal that Kleypas failed to sign. Kent stated it was a clear violation, which Singh agreed. The Map also shows in improper seal design. Wilkinson replied that the Grant of Easement, which does not show a seal and signature, and its Map, which has an unsigned seal, were recorded with the Jackson County Clerk. Kent observed that it was a recorded document for granting ingress and egress, but as such it was not on the same violation level as failure to seal and sign a filed map of survey. Kent suggested a letter of concern for the improper seal along with a letter of reprimand for failing to seal and sign final documents. Boyd accepted the amendment. The motion passed unanimously.

#### 2942 – WHPacific Inc

Ulberg explained that Exhibit 3 was the trigger document that created some concerns in the previous law enforcement case 2901 and the use of the PE title of individuals. There were 16 individuals that were the original concern. WHPacific Inc referenced that when looking at all of them they branched out over various states and three were linked to Oregon and licensed appropriately, or they would hire sub-contractors to perform the work. They are just on the document as a resource list, not for this particular project in question. The three in Oregon Aruther Furber, Scott Schlechter, and Dwight Hardin. Two were licensed appropriately at the time of submission of the bid. One individual was not, Harden was in the delinquent status.

AAG Lozano referenced that WHPacific Inc falls under the exception in ORS 672.060(9) as far as its bid. Kent said they may not fall under the exemption as they do have an Oregon location, based in another state. The list of key people are licensed in this state, the ones deep in the organization chart some are in other states. Kent said the most concerning issue in this case is, actually, the attorney representing the company (Baker) not being a licensed member of the bar. Kent said LEED AP is a protected designation and might be worth letting them know that an attorney not registered with the bar is holding himself out as possessing a LEED AP designation. It was moved and seconded (Boyd/Kent) to close this case as allegations unfounded and refer Baker to the Oregon State Bar. The motion passed unanimously. There was no further discussion.

#### 2943 – Stephen Philip Maslan

Ulberg explained that this was a two part complaint for improper seal and negligent work associated with wind load rates. Shelly Duquette confirmed that the wind load analysis was adequate given the county requirements. For the seal concern, Maslan stated to Wilkinson in a letter that he was going to get that fixed. Ulberg called him and asked if that was completed and he said that he was ordering that today. Maslan provided a copy of the new seal in an email attachment.

On the May 24, 2016, the Board received a final order from the Kanas Board assessing a civil penalty against Maslan, signed April 22, 2016, which was not contested. Boyd asked what that order was for. The order stated “disciplinary action taken against Respondent’s professional engineering license in Missouri and Nebraska constitutes a violation of the Kansas SACO and warrants disciplinary action in Kansas.” This was in connection to the order Maslan received in 2013, for which OSBEELS issued a letter of concern. Boyd asked if the other states assessed a civil penalty and how big those penalties were. Ulberg said she did not inquire into that issue since it was not the original reason for the case, and asked if she needed to open a new case related to his out of state discipline and conduct further investigation on it. Lopez read the order and found information that he got his license revoked due to performing work in violation of his probation. Missouri revoked and Nebraska too reciprocal action. Lozano said that Oregon is unable to take reciprocal action based on our statutes, as we do not have anything surrounding violations of probation. So, Ulberg brought the discussion back around to the wind load and seal issues, reminding the committee that Duquette confirmed the wind load calculations were acceptable and that Maslan obtained a new, compliant seal. It was moved and seconded (Kent/Boyd) to close this case as compliance met. The motion passed unanimously.

#### 2944 Raymond L Whiting

Ulberg explained that Whiting sent in a Question Form self-reporting a failure to file a map appropriately. When Wilkinson sent a follow up investigatory letter in 2015, Whiting did not respond. None of the contact information Ulberg was able to find for Whiting produced any contact with or response from Whiting. AAG Lozano noted that the evidence in the case file, which is only Whiting’s claim of his own violation, without even a statement that the conduct took place in Oregon, is insufficient evidence to even establish a violation within OSBEELS’s jurisdiction *may* have taken place. Kent asked for county assessors, address, residence, or DOR tax information. How much staff time and resources would we like expended on this case, which is all based on a self-report of activity that may not have even taken place in Oregon? We

have no evidence. It was moved and seconded (Singh/Boyd) to close this case as insufficient evidence. The motion passed unanimously. There was no further discussion.

#### 2953 – James Anspach

The Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Professional Landscape Architects filed a complaint alleging unlicensed practice of engineering by James Anspach after he testified in a court case there as an engineer. Montellano explained that the course of investigation revealed that Anspach is touted as the grandfather of subsurface utility engineering (SUE). According to internet research, SUE typically involves working with departments of transportation, utility companies, airports and local governments. Montellano inquired with ODOT, NW Natural Gas, Port of Portland, Deschutes County and City of Bend but there was no evidence to indicate that Anspach engaged in the practice of engineering in Oregon. Further, Montellano also did not locate any instances of Anspach providing expert testimony as an engineer in Oregon. AAG Lozano advised that she did not see in the investigation that was a violation of Oregon rules or laws, and opined it was far more appropriate for the state of Missouri to open an enforcement case against Anspach if his conduct – in Missouri – was a violation of Missouri’s laws or rules. It was moved and seconded (Boyd/Kent) to close the case as allegations unfounded. The motion passed unanimously.

#### 2956 – Nicholas Amedeo Dente

Ulberg explained this was a complaint from Gollier that Dente was performing engineering services, but using Gollier’s stamp and seal. Gollier was an employee/partner of the Alliance firm with Dente prior to this activity, but said he had been on extended leave when it happened. Gollier learned of this activity from the Portland Public Schools (PPS) contacting him in relation to a document that was prepared with his seal and signature, during his leave. Dente received a letter from Wilkinson and failed to respond. Ulberg spoke with Gollier who thought the company has closed and was not doing anything and was no longer personally concerned.

The project manager (Smithey) for PPS said that there were three projects that Alliance created for them. The projects had the Alliance name on them; however they stated that they engaged, worked with, and spoke to Dente. Kent asked if the Gollier signatures on the seals were looked at closely, were they identical, which they are. This made it appear to be a facsimile of a signature and seal. However, Smithey sent copies, not originals, so it was difficult to be certain. Lozano said additional information was needed to substantiate that complainant was actually on leave from the firm when the work was sealed and signed. Ulberg brought up that an “ask” was done to Gollier for evidence as to his time off, to which he has not responded. Lozano noted that the request for documentation can be formalized with a reminder to Gollier, if he is still a registrant, that he is required to cooperate with a Board investigation, irrespective of whether he is still personally interested in the case, and that the information can be subpoenaed if Gollier is no longer a registrant or doesn’t cooperate with a formal request. Singh had some questions about the seal and signature: was Gollier using a facsimile seal and signature; did he authorize Dente to use a facsimile seal and signature on his behalf; was Dente’s stamping and sealing under Gollier’s signature done routinely when Gollier was in the office, but something Gollier wanted stopped once he was on leave; or, was this a “stolen” facsimile used by Dente without Gollier’s knowledge, or a forged signature and seal? Isn’t the unauthorized or forged use of Gollier’s signature and seal beyond our jurisdiction and actually a criminal matter? AAG Lozano noted

that, if it occurred, it would be both within OSBEELS' jurisdiction *and* a crime that could be referred to the appropriate District Attorney's office.. Ulberg stated that she did not ask if Dente was using the seal and signature with Gollier's knowledge while Gollier was in the office with the company. Staff was directed to conduct additional investigation for discussion during the August meeting.

#### 2961 – Morgan Nicole Rider

Ulberg explained that this was an anonymous complaint that Rider was using the title "Engineer" while unlicensed. Rider had claimed in her biographical information for the Environmental Quality Commission (EQC) and Oregon Water Shed Enhancement Board (OWEB) websites that she was a "professional engineer in the state of Oregon." These are both state commissions. Wilkinson sent a letter in February 2016 regarding her title violation, and her response was that she removed that statement. However, she had actually revised it to read that she "is an environmental engineer with 25 years of experience." Ulberg emailed Rider again about the title violation, and Rider provided another revised biographical paragraph and asked for Board direction on whether her most recent revisions are in compliance with the Board's statutes.

Lopez clarified that Rider did have an Oregon license at one time, but let it lapse in December 2008. Lopez further clarified that Rider was originally licensed with Oregon in 2000 as an environmental engineer, but let it go delinquent in 2008. Kent looked up Rider during the meeting and found that the revised version was on the OWEB website and the EQC website. It was moved and seconded (Singh/Boyd) to write Rider a letter confirming that her biographical information is no longer in violation of the Board's title act, and the case be closed as compliance met. The motion passed unanimously. There was no further discussion.

#### 2964 – Jack Crowell Camp

Ulberg explained that Camp provided the order from his Texas discipline relating to a CPD issue. He had falsely claimed during an audit to have completed CPD hours and was assessed a civil penalty. His license was suspended and he was assessed a \$4,000 civil penalty. Camp has refused to pay the penalty and the \$4000 is still outstanding. Camp's suspension period for Texas ends August 27, 2017, and his license expired in 2015.

Kent asked about his continuing education credits in Oregon. AAG Lozano noted that the LEC has, in prior cases like this, instructed staff to perform a CPD audit of the Respondent's PDH. Lopez explained that an audit was already done in this case and that Camp is up to date on his Oregon CPD hours. Kent reiterated that Camp falsely attested to Texas regarding his continuing education, which was an untruthful statement in violation of OAR 820-020-0025(1). AAG Lozano noted that Camp has also failed to comply with a Board order by refusing to pay his civil penalty, which would be a violation in Oregon under OAR 820-020-0045(3). AAG Lozano said the Board has the authority to take reciprocal disciplinary action because one of the sanctions against Camp was license suspension. Boyd asked where Camp might be working now? Ulberg said that, per JR Wilkinson's last communication with him, for RL Engineering, at a Nevada address. After considering the civil penalty factors, it was moved and seconded (Kent/Boyd) that for the violation of OAR 820-020-0025(1) Camp's Oregon registration be suspended for 60 days and he be assessed a \$1000 civil penalty, and that for the violation of OAR 820-020-0045(3), Camp's license be suspended until such time as his Texas civil penalty is

paid. AAG Lozano clarified that the Board may suspend registration for a set time, or conditioned upon completion of certain conduct, but that the Notice would need to be specific about exactly how that would work. Did the LEC, for example, want to propose suspending Camp's registration for 60 days or until such time as his Texas civil penalty is paid, whichever is later? Or, does it want them to run consecutively? If consecutive, what if Camp pays his Texas penalty during the first 60 day suspension? The LEC discussed increasing the civil penalty and removing the civil penalty and only suspend his registration. Boyd was comfortable with what Kent proposed. These would be two suspensions and they can be at the same time, or can be consecutive, if drafted appropriately in the notice and order. Singh requested clarification as to whether the Board actually had authority to consider Camp's refusal to pay the \$4000 civil penalty owed to Texas. Kent then withdrew his motion. It was moved and seconded (Kent/Boyd) for violation of 820-020-0025(1), to suspend Camp's license for the same period it will be suspended in Texas (until August 27, 2017). Singh raised the question to look at this as if he had done it in Oregon. Singh looked at this through the Board's matrix, in which Camp would be assessed \$1000 and given a 60 day suspension for failing to comply with his CPD requirements. However, staff and AAG Lozano noted that Camp's Texas case was not simply a matter of failing to complete CPD requirements, it was also the affirmative misrepresentation of CPD hours obtained to the Board. They looked at the Knight case as a comparison, where the Respondent had been untruthful when claiming CPD credits for activities in which he did not actually participate, and the proposed penalty in that case was revocation. Singh is looking particularly at the untruthful statements. The severity lies within the falsification of the information. The motion failed; Kent, Boyd, and Singh opposed. It was moved and seconded (Boyd/Kent) to suspend Oregon registration until the end of the Texas suspension or one year. Singh thought 2 years seems reasonable based on the other case. Boyd amended his motion; for the violation of 820-020-0025(1), Camp's registration would be suspended for two years. It was moved and seconded (Boyd/Kent) to issue a Notice of Intent for a violation of OAR 820-020-0025(1) for a 2 year suspension. The motion passed unanimously. There was no further discussion.

#### 2965 – Dan Gilbert

Montellano explained that this case is the result of a previous investigation (2936). The allegations against Gilbert are for stamping plans with an incorrect stamp. On two instances Gilbert used a stamp that does not comply with OAR 820-020-0025(2)(c). Gilbert provided a seal sample that shows he is now in compliance with OAR. It was moved (Kent/Boyd) to close the case as compliance met. The motion passed unanimously.

#### 2967 – Charles Loving

Montellano informed the LEC that Charles Loving self-reported to OSBEELS that his registration had lapsed and during that time he had stamped two projects. The investigation revealed that Loving had two previous delinquent periods and that he fraudulently updated the expiration date on his seal. AAG Lozano brought forward that the projects stamped by Loving during his lapsed periods were substations for Bonneville Power Administration, which may have been on Federal land and outside of OSBEELS' jurisdiction. A discussion was had about the use of a seal with a forged expiration date. The LEC instructed staff to obtain additional information from Bonneville Power in regards to whether the work in question was on federal land and what their requirements were for the substation projects.

### 2969 – Patrick O’Neill Fiedler

Due to time constraints, this case was tabled until the next LEC meeting scheduled for August 11, 2016.

### 2981 – Timothy A Kent

Ulberg provided case summary on Timothy Kent for the allegation of failing to file a map of survey within 45 days of setting monuments, ORS 209 violation. Ulberg also added that she noticed during preparing to present this case that there is an expiration date missing on the seal on the last page of Exhibit 4. Singh had a question surrounding the expiration date on the seal. Wilkinson said that the box was removed, but the expiration date was always there. AAG Lozano asked a policy question as to the origin of the seal design standard. Lopez said that it was created by a previous Board driven to have consistency for building officials.

After discussing the civil penalty factors, the LEC determined that lack of intent, that the maps are now all filed, and that it was self-reported rather than discovered by another practitioner in the field were mitigating factors. Boyd pointed out that the location of the surveys was remote, but AAG Lozano pointed out the remoteness of the location has not been considered a mitigating factor in the past, nor had any bearing on prior cases at all. Boyd moved to issue a letter of concern. Singh says that it was an education effort it would have been a good learning lesson to file this on time. Kent said an opportunity missed, but does not negate the violation. No 2<sup>nd</sup> on Boyd’s motion and it died. It was moved and seconded (Kent/Boyd) to issue a letter of reprimand. AAG Lozano noted that a reprimand would not be consistent with prior 45 day violation cases, but some of the LEC members opined that the fact that it was corrected before being self-reported, and that the work itself was done as part of a school project rather than for a client were strongly mitigating factors. It was moved and seconded (Kent/Boyd) to issue a Notice of Intent as a letter of reprimand. The motion passed; Kent opposed. There was no further discussion.

### 2988 – Toby Bolden/Terry Marsh

Due to time constraints, this case was tabled until the next LEC meeting scheduled for August 11, 2016.

### 2990 – Dale Hult/Jane Gille

Due to time constraints, this case was tabled until the next LEC meeting scheduled for August 11, 2016.

### 2991 – James A. Beck

Due to time constraints, this case was tabled until the next LEC meeting scheduled for August 11, 2016.

### 3000 – Ambit Consulting

Montellano informed the LEC that this case was opened as a result of a previous investigation of case# 2936. The allegations were offering and advertising land surveying services in Oregon without a licensed professional land surveyor on staff. Dan Gilbert works for Ambit Consulting on a consultant basis. Montellano explained that Ambit obtains their projects from their existing

client base, and not as a result of advertising or offering land surveying in Oregon. Sean Ripley, primary contact for Ambit Consulting in Washington, explained that their existing customer base will contact them to inquire about whom to hire to have land surveys performed in various states. Per Ripley, when the work site is located in a state in which Ambit does not have a licensed professional on staff, they employ a land surveyor who is licensed in that state as a consultant. Montellano informed the LEC that the investigation did not result in evidence to show that Ambit was advertising or offering land surveying services in Oregon without a licensed professional on staff. It was moved (Boyd/Singh) to close the case as allegations unfounded. The motion passed unanimously.

### **Discussion on College/University Unlicensed Practice, Title Use & Related Cases Subject to OAR 820-015-0060**

#### **2890 – Dave Young**

Wilkinson explained that this case is related to prior case #2787, David Lysne, and it involves Oregon State University (OSU) and an engineering student who surveyed a stream and re-designed a culvert as a school project where a culvert crossing was designed to improve fish passage. OSU employee Lysne used the student's (unlicensed) design for the construction of the actual culvert, but the student's design had an error that caused the culvert to be set too deep causing stream scour and failure. Lysne has already been disciplined, but further investigation of the matter led to Dave Young who allegedly was in responsible charge of the design. However, the investigation revealed that Young was involved only in managing construction. The student who had surveyed the stream and designed the culvert had done so solely as a school project, at the direction of his professor, and had no knowledge his classwork had been used for construction. Therefore, Wilkinson and AAG Lozano explained, Wilkinson's investigation had led to no evidence that anyone but Lysne violated OSBEELS' statutes or rules.

It was moved (Boyd) to close the case as allegations unfounded. Singh asked for clarification. In reply, it was explained that Lysne decided to use the unlicensed, unstamped student's work and submit the design for Oregon Department of Forestry (ODF) approval. Young only oversaw construction activities. The student completed his class project for Professor Pyles who shared the student's work with Lysne, but there is no evidence that anyone but Lysne determined to use the unlicensed, unstamped work and submit the design to ODF. It was moved and seconded (Kent/Boyd) to close the case as insufficient evidence. The motion passed unanimously.

#### **2958 – John Gambatese**

Wilkinson stated that John Gambatese is an OSU professor who wrote a series of research papers regarding interstate highway work-zone safety, including the use of mobile barriers and reduced speed. He also has participated on related work groups and has an OSU Web site. Across the gamut, Gambatese used his OSU affiliation and Oregon address with the "P.E." title. However, he is not a registered professional engineer in Oregon, but a registered engineer in California. Committee members were asked whether this was a case of title violation only, or if the work he has been doing is also an unlicensed engineering work violation. After reviewing the reports, Singh observed that many research papers provide guidance and recommendations that are beyond what was done and found. Boyd added that so do text books. AAG Lozano asked the LEC to distinguish true research papers from consultation, as the latter is the practice of

engineering, and determine whether Gambatese's work is the former or the latter. In other words, does he deal with general principles, even if illustrated with examples, or are there specific recommendations applicable to a particular site? Singh noted that the reports provided were general in application. He added that research projects could yield specific outcomes, like the design of rumble strips. The act of engineering would occur during the application of a specific rumble strip design to a project, and wondered if that would, in turn, bring the design of the rumble strip within the industrial exemption. Kent offered that it was research, which may produce something that may be used or manufactured and that may otherwise fall under the industrial exemption. Singh added that ODOT will commission research papers. For example, if a rumble strip design caused too much noise for use in residential areas, ODOT might then commission research into other designs.

Wilkinson highlighted one of the reports showing implementation phases. It showed that the design would be used after approval of the District Engineer. Kent noted these were products. They are tools that can be applied by an engineer in response to specific needs. It's the practice of engineering in terms of application to the built environment, but the research and development of products, methodology, procedures, and guidance to be used in engineering are not the practice of engineering.

Boyd suggested a letter of concern to inform Gambatese to indicate the state where Gambatese is licensed with his PE designation. Kent replied that what Gambatese has been doing are, in fact, title act violations. The discussion had been focused on whether his reports were activities that constituted the practice of engineering. In regards to the title act, Kent asked about the attorney's response. AAG Lozano noted that Oregon's courts have not yet addressed any constitutional claims related to state title acts

Wilkinson informed the LEC that Gambatese was interested in resolving the case. Singh observed that Gambatese showed an OSU address and PE title without an Oregon registration. The assumption was that he was licensed in Oregon; however, Gambatese is not registered in Oregon. AAG Lozano characterized that as the violation. Singh remarked that Gambatese can use the "PE (CA)" title to comply with Oregon statute and rule.

Boyd suggested issuing Gambatese a NOI for seven title act violations at \$250 each for a total sanction of \$1,750. Kent was uncomfortable with the amount. AAG Lozano replied it was not only his OSU Web site, but that he made public presentations and handed out documents with a misrepresentation of his licensure. Singh was concerned that there may be many more violations. Kent suggested that the body of conduct be treated as a single violation, but with a \$1,000 civil penalty because of its large scope. It was moved and seconded (Boyd/Singh) to issue a NOI for \$1,000 for use of the PE title when unlicensed in Oregon. The motion passed unanimously.

#### 2959 – William G Grip

Ulberg explained that this was an anonymous complaint about a business card that had Bill Grip PE on it, when he is not licensed in Oregon. Grip responded to the investigative letter by saying he does not work at OSU anymore and lives in New Jersey. He provided a copy of his new card for New Jersey with PE (VA) on it (he is registered in Virginia). Kent was curious how many

states had title acts. Lopez described Texas and their requirements. It was moved and seconded (Kent/Boyd) to close this case as compliance met. The motion passed; Singh opposed. There was no further discussion.

#### 2968 – Andre Barbosa

On April 7, 2016, the LEC reviewed allegations of title violations by Andre Barbosa. Barbosa's faculty page for Oregon State University and the page for the Barbosa Research Group (also affiliated with the school) showed the title, PE, after his name. Barbosa is not registered in Oregon. When contacted about the allegations, Barbosa attempted to remedy the situation by adding the jurisdiction he is registered in according to OAR 820-010-0730; however the Barbosa Research Group page was not corrected. The LEC directed staff to follow-up and see if full compliance was met. Case# 2968 returned to the LEC on June 9, 2016, and staff advised the committee that full compliance had been met as Barbosa showed on both web pages that he is a registered professional engineer in Portugal. It was moved and seconded (Kent/Boyd) to close the case as compliance met. The motion passed unanimously.

There was further discussion on making contact with Oregon institutions that have engineering curricula. Montellano presented draft letters to Oregon State University and University of Portland for consideration as they have faculty who are not registered in Oregon, but are using the title of professional engineer on their websites. The LEC directed staff to perform a more detailed review of Oregon institutions prior to the title act being addressed by the Board. The Board should review the letters and offer any comments. There was no further discussion.

#### Preliminary Evaluation: OSU / Havlin Kemp

Wilkinson explained that Havlin Kemp, PE, submitted an article regarding OSU plans to trademark "Oregon State Engineer" for use by its college of engineering, to refer to its students and graduates. Kemp inquired whether the Board had had any discussions with OSU about use of the "engineer" title without registration. Wilkinson added that he drafted a letter to OSU for the LEC to review. AAG Lozano encouraged the members to review the letter and provide any suggested revisions to Wilkinson or to her before the Board meeting. Wilkinson clarified that the letter was written to OSU President Ray because this issue was a policy matter rather than addressing individual title act violations. Lopez emphasized that OSU may not be aware of the unintended consequences of the proposed trademark. AAG Lozano informed that there is no need to open a law enforcement case because while the Board can oppose any trademark application OSU may make, the Board's title act applies to individuals or to entities advertising to, offering to, or performing engineering work, none of which apply to the school. However, she added, the Board can certainly send the letter in response to the Kemp inquiry. The draft letter will be included in the July Board packets for discussion.

#### State poll on faculty registration

The LEC determined to forward this discussion to the July Board meeting.

#### Preliminary Evaluations

##### Allen Alley / Kenneth Cochran

OSBEELS received a complaint from Kenneth Cochran, PLS, alleging that gubernatorial candidate, Allen Alley, purports to be an engineer in one of his television advertisements. On

April 27, 2016, OSBEELS received a complaint from Jerry King, PLS, with the same allegation. Alley is not now, and never has been, a registered engineer in Oregon, although he states in his campaign advertisement, “I’m Allen Alley. I’ll take a different approach. I’m an engineer and a problem solver.” The LEC discussed the allegations. It was moved and seconded (Boyd/Singh) to open a case. The motion passed; Kent opposed.

#### Larry Joe Griffith / OSBEELS

Ulberg explained that this was a self-reporting of a case in Oklahoma. Oklahoma disciplined Griffith for business certificate of authorization violations. Griffith paid his civil penalty and reported in a timely manner. A business Certificate of Authorization is not something Oregon requires. It was moved and seconded (Singh/Kent) to not open a case. The motion passed unanimously. There was no further discussion.

#### Systems West Engineers Inc/Anonymous

Ulberg explained that this was an anonymous complaint against Systems West that they had six members identified on their website as engineers that were not licensed in the state of Oregon. Each of the six individuals had biography pages and also the company had a job posting that outlines the duties performed as a company engineer. One of the six individuals is an intern.

AAG Lozano pointed out two issues, there are potential, individual title violations by each of those people on the website, plus, Systems West could be considered to be offering/advertising engineering services without full time registered engineers on staff, and that the LEC would need to open separate cases on any of them that they would like to see investigated – they would all be separate respondents. It was moved and seconded (Singh/Boyd) to open the case against each of the individuals for title violations. Kent wanted clarifications on the other people referenced on the site (beyond the six in the complaint) and if they are in compliance. Ulberg specified that the preliminary review was limited in scope to what was identified in the complaint. AAG Lozano said the motion can be amended to have staff verify licensure of all individuals referenced on the website and open cases against all that are out of compliance, if that is what the committee wishes. Singh said he will amend his motion, Boyd confirmed he would 2<sup>nd</sup> an amended motion. It was moved and seconded (Kent/Singh) to open a case against Systems West Inc. relating to an offering concern. The motion passed unanimously. Singh then amended his motion, and Boyd seconded, to open a case against all individuals referenced on the website that appear to be out of compliance of the title law. The motion passed unanimously. There was no further discussion.

#### Amber Wolf / Daniel Cook

Daniel Cook, PE, alleged realtor Amber Wolf falsified his FHA foundation inspection reports. Wilkinson explained that Cook completed two mobile home inspections and had submitted his reports to Wolf. Subsequently, the lender requested that Cook send one of the inspection letters directly to them because the reports did not agree. He had reached a “does not conform” opinion, whereas the forged letter carries a “does conform” finding. Cook discovered his seal had been cut and pasted onto the forged document. Kent stated this was egregious. He noted potential fraud, forgery, identity theft, and unlicensed practice, and asked if there were open criminal investigations on this matter. Wilkinson replied that any open criminal investigations or civil actions would be discovered once the case has been opened and contacts made. Lopez also suggested contacting the Real Estate Board.

Kent asked if there are active criminal investigations, does the Board need to investigate unlicensed practice? He thought sending it to the District Attorney (DA) for prosecution was crucial, including unlicensed practice. AAG Lozano commented that unlicensed practice is both a Board regulatory violation and a crime. Kent clarified his concern. He wanted to avoid having two investigations occurring for unlicensed practice. However, he recognized that the DA would handle the criminal matters and the Board would handle the administrative violations. AAG Lozano added that the standards of proof are different. The DA needs to meet the beyond reasonable doubt standard, while the Board needs to meet preponderance of the evidence. It was moved and seconded (Kent/Boyd) to open a case and to also refer the matter to the Real Estate Board and the Clackamas County DA Office if they are not already investigating the matter. Lopez also suggested notifying the federal Housing and Urban Development (HUD). Kent amended the motion to include a HUD referral and Boyd accepted the amendment. The motion passed unanimously.

#### Advanced Earth Sciences / OSBEELS

Wilkinson explained that Advanced Earth Science, Inc. was a referral from the JCC. He stated that Advanced Earth Sciences prepared a report regarding their review of the Riverbend Landfill in Yamhill County. To JCC members, the report offered opinions that appeared to be the unlicensed practice of engineering. The firm is based in California, the report's author is a professional engineer not registered in Oregon, and he used the "PE" title. It was moved and seconded (Boyd/Singh) to open a case. The motion passed unanimously.

#### Unfinished Business

##### 2948-Ray Moore case update

On April 7, 2016, the LEC determined to close case #2948 against Ray Moore and open an investigation on Dale Hult. New information was received in regard to the allegations, so case #2948 against Moore was removed from the Board's consent calendar for May 10, 2016, until the information could be reviewed. The information did not pertain to Moore, so a memo was written for the LEC advising of the outcome, and the case is on the consent agenda for the July 12, 2016, Board meeting. There was no discussion.

##### James Skowronski / Sanctions IA

James Skowronski timely self-reported receiving sanctions from the Engineering and Land Surveying Examining Board of the State of Iowa for unlicensed practice and the case was brought to the LEC as a preliminary file. The LEC had directed staff to follow-up and ensure Skowronski complied with the Iowa order and to revisit this preliminary as unfinished business at this June 2016 LEC meeting. The Engineering and Land Surveying Examining Board of Iowa met on May 19, 2016, and voted to close case# 15-14 against Skowronski, because he satisfied the terms of his Combined Statement of Charges and Consent Order in a Disciplinary Case dated January 25, 2016. It was moved and seconded (Boyd/Singh) not to open a case. The motion passed unanimously.

##### Daniel Sander / Title Violation

On April 7, 2016, the Law Enforcement Committee reviewed a preliminary evaluation of a complaint that Daniel K. Sander was using the title of P.E. in Oregon without a valid registration.

The website for Backflow Management, Inc., Sander's employer, listed his name with PE after it. Sander is not registered in Oregon, but he does have a valid registration in Washington. The preliminary review produced no evidence that Sander is/was practicing or offering to practice engineering in Oregon so the LEC determined not to open a case but directed staff to send a letter of concern and follow-up to ensure compliance. A follow-up check of Backflow's website was performed on May 25, 2016 and it shows that Sander is now in compliance. It was moved and seconded (Boyd/Singh) not to open a case. The motion passed unanimously.

#### 2925 – Joel Smith case summary review

Wilkinson informed that the LEC had authorized issuing Joel Smith, PLS, a NOI regarding four violations for two maps of survey, including two failures to file surveys and two failures to file corner restoration records. However, only one map and set of records had not been filed. As a result, the LEC needed to review the approved sanctions. In addition, ORS 209.250(9)<sup>4</sup> applies to only public land survey corners, which would not include 1/16<sup>th</sup> corners. These references also needed to be removed. AAG Lozano asked if this case presented any distinctions from the earlier Kent case. Wilkinson replied that in this case the County Surveyor discovered the monuments in the field, the surveyor did not self-report. When the County Surveyor returned to the office he found no records, either for the survey or the restored corners, so he filed a complaint. In the prior case, for contrast, no one found the monuments. That individual self-reported not setting monuments. There also was a long period of time between when Smith set monuments (1998) and their recent discovery. The prior case did not have such a lengthy time span between setting and reporting. Smith also was not conducting his survey as a class project. It was moved and seconded (Boyd/Singh) to issue a NOI for \$2,000 for failing to file a map of survey within 45 days and one set of corner restoration records. The motion passed unanimously.

#### Request for Qualifications (RFQ) revision

Wilkinson informed the LEC that staff had given a presentation to the Oregon Association of County Engineers and Surveyors (OACES). One of the discussed topics was soliciting professional reviewers for land surveying cases. A consistent concern heard was the issue of liability and indemnification. The issues were shared with AAG Lozano who made modifications to the Request for Qualifications (RFQ) in order to address those concerns.

AAG Lozano explained two primary changes. One is the indemnification provision, which was modified to be as reciprocal as the Oregon Constitution would allow under the Tort Claims Act. The other is to require professional or general liability insurance. The Board can't take away the risk, but can limit indemnification and require an insurance policy to cover potential litigation expenses or damages for the reviewer.

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<sup>4</sup> ORS 209.250(9), If, in the performance of a survey, a registered professional land surveyor finds or makes changes in a public land survey corner or its accessories as described in an existing corner record or survey map in the office of the county surveyor, the surveyor shall complete and submit to the county surveyor a record of the changes found or made to a corner or accessories to the corner. The record must be submitted within 45 days of the corner visits, and must include the surveyor's seal and original signature, business name and address, and be on stable base reproducible material in the form required by the county surveyor.

Kent asked whether reviewers would need to become independent contractors. AAG Lozano replied that they already are independent contractors. She stated a reviewer *could* be an employee, in which case he or she would not be subject personal liability and would not be required to indemnify the Board, but that unless the reviewer is, in fact, an OSBEELS employee, he or she must be established as independent contractor, including by bearing the risk of a lawsuit individually. However, there is no current RFQ requirement for errors and omission insurance, so she provided it in the revised RFQ draft. She also understood the concern of the surveyors about the potential liability. There are only two ways to address it, to hire employee reviewers, or for the reviewers to carry their own insurance. Boyd observed that a reviewer can include insurance coverage costs in his or her service pricing. AAG Lozano agreed and emphasized that, when contracting with an engineer, land surveyor, or photogrammetrist, the most qualified person is picked, they submit their price, and a contract is finalized. The primary factor is expertise, not price, although the Board can set not-to-exceed amounts or determine that it cannot afford the candidate selected first, but then the Board would select the next most qualified person, and that person would submit his or her price, etc. She added that the Board purposely adopted rules to make its contracting activity with registrants consistent with State contracting rules.

AAG Lozano observed that this issue of liability concerns has not yet come up with professional engineer expert reviewers or expert witnesses. In most cases, the contract is with the registrant's firm so coverage is provided to the identified key person. For some reason, this has not been true of surveyors. Wilkinson explained that as County Surveyors they are covered, but several are retiring from public duties and wish to remain active. AAG Lozano noted that the counties would not, in fact, cover the County Surveyors' liability for work as an expert reviewer because it would not be within the scope of the County Surveyor's employment. Boyd commented that carrying professional liability insurance is a prudent consideration. Kent asked about requiring professional and general liability insurance. AAG Lozano replied that insurance is required in this version. It has always been allowed, of course, but has not been a requirement to contract up to this point. Kent theorized that he could do engineering work without insurance and that is a choice. He submitted that the insurance requirements could further limit the number of responses to the RFQ. He suggested that insurance coverage be offered as a suggestion, not a requirement. It was moved and seconded (Kent/Singh) to state that OSBEELS is not providing professional or general liability insurance to independent contractors and, while recommended, it would not be required to contract. The motion passed; Boyd opposed. The changes will be ready for approval at the July Board meeting.

#### Update to LEC Disciplinary Procedures & Flow Chart

Wilkinson informed the committee that the changes LEC made to its procedures for consistency with its rules, such as its preliminary evaluation process, are now reflected in the LEC Disciplinary Procedures. It was also an opportunity to update the Flow Chart and clarify its language. It was moved and seconded (Boyd/Kent) to recommend to the Board to approve the changes. The motion passed unanimously.

#### OACES response to "Engineer of Year"

Wilkinson stated that the LEC reviewed a past preliminary evaluation regarding OACES and its "Engineer of the Year" award to persons who are not registered with the Board. While the LEC

determined to not open a case, a letter was directed to OACES President Mike Berry, PLS. A response was recently received that the “Engineer of the Year” award would be given to registrants and “Road Official of the Year” would be awarded to non-registrants. Kent expressed this was a good result.

Memo: Update on 10 NOIs to revoke

Montellano informed that the LEC authorized issuing NOIs to those individuals who had not paid their civil penalties. A draft NOI had been drafted as a template and staff are working with AAG Lozano to complete this task.

**New Business**

There was no new business.

Boyd summarized the tabled cases as #2969, #2988, #2990, and #2991.

The meeting adjourned at 4:58 p.m.