



# Oregon

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

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**PROFESSIONAL PRACTICES COMMITTEE**

Minutes of Meeting

April 12, 2013

Members present:

Sue Newstetter, Chair

Steven Burger

Sue Frey

Tom Van Liew

Staff present:

Mari Lopez, Executive Secretary

Jenn Gilbert, Executive Assistant

Joy Pariente

Monika Peterson

James R. (JR) Wilkinson

Others present:

Katharine Lozano, Assistant Attorney General

John Seward, PE

The meeting of the Professional Practices Committee (PPC) was called to order at 1:10 p.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220 Salem, OR 97301.

**Public Comment**

There were no public comments.

**Guest Discussion**

**Geotechnical Engineering**

Mr. Seward came to discuss if a person preparing a report presenting the results of the landslide evaluation of a proposed timber harvest unit is required to be licensed under Oregon Revised Statute (ORS) Chapter 672 with the Committee. He explained that the landslide evaluation report is covered under Oregon Administrative Rule (OAR) Chapter 629, Division 623, Shallow, Rapidly Moving Landslides and Public Safety, which sets certain requirements and potential restrictions on timber harvest and forest road building on state and private forest lands. The rule applies to proposed timber harvest and forest road building operations on steep, mountainous, landslide-prone terrain, where there are residences or high traffic volume roads downslope from the forest activity.

Debris flows start as relatively small, shallow-depth landslides which enter a confined channel and scour rock, soil and vegetation from the channel and adjacent hillsides. They can be very

destructive and post a risk to public safety; five people were killed in two separate debris flow events in 1996, resulting in the creation of these rules.

Mr. Seward said the task of the individual conducting the public safety review is to make a determination as to the “risk of serious bodily injury or death caused by shallow, rapidly moving landslides directly related to forest practices,” which is described in OAR 629-623-0000(3). The rule requires the professional to make a determination of “impact rating,” a term defined by the Oregon Department of Forestry as identifying “the relative risk of serious bodily injury or death due to rapidly moving landslide impact to structures or roads.”

Mr. Seward asked the Committee to consider if these actions require the individual conducting the public safety review to be licensed. Since there is an overlap in areas of practice, the Committee determined to forward this question to JCC.

### **Unfinished Business**

#### **Flood Elevation Work**

An individual asked Board President Dan Linscheid if calculating a flood elevation would fall under engineering or if it could be completed by a land surveyor instead. The individual was asked to provide more information regarding their question. The individual responded asking, “Does OSBEELS believe that calculating a flood elevation would fall under engineering or would it be ok for a land surveyor to perform this flood elevation calculation?” The Committee determined they needed more information on this topic. Staff was directed to invite Christine Shirley with FEMA’s National Flood Insurance Program to speak at an upcoming Committee meeting. There was no further discussion.

#### **Hydrographic Surveying**

Staff discovered information in the NCEES Speaker’s Kit for Land Surveying which indicates its opinion regarding whether hydrography is an activity which requires licensure as a land surveyor, as discussed during the December 2012 Committee meeting. This information was developed in cooperation with the National Society of Professional Surveyors (NSPS). NCEES recognizes that “underwater topographic surveying is known as hydrography.” AAG Lozano reminded the Committee that organizations such as NCEES may attempt to acquire dominion over as many professional practices as possible, which could be why the Speaker’s Kit identifies hydrography as a form of land surveying. Ms. Newstetter said the inclusion of regulated and non-regulated professions under the same NAICS codes leads to confusion on applications for the Office of Minority, Women and Emerging Small Business (OMWESB). Ms. Lopez said Staff has received a matrix from OMWESB which can be filled out to indicate which professions included in NAICS codes are regulated by OSBEELS. Staff will continue to work with OMWESB and will attempt to develop a matrix to assist in these efforts. There was no further discussion.

#### **Sealing Software Output**

At the December Committee meeting, the Committee addressed a question regarding whether or not it is necessary to stamp and sign the output from a design program if it is being given to a client. A registrant specifically referenced engineered wood products software which is used for sizing the company’s joists and beams. Staff drafted a response, which let the individual know that if a person is licensed, they must seal output documentation from software if it is being sent to clients, as per ORS 672.020(2) and OAR 820-010-0621. The response also indicated that unlicensed persons using this software and providing output to clients may not be legal,

depending on the circumstances. The Committee approved the response. There was no further discussion.

#### Energy Star Requirements – Ben Taylor

Staff received an email from Ben Taylor asking if an engineer who is not registered in Oregon can stamp and sign documents relating to Energy Star certification in the state of Oregon. Energy Star allows engineers, regardless of state of registration, to stamp and sign the Statement of Energy Performance (SEP) and the Energy Star checklist. After further research regarding Energy Star procedures, the Committee determined the individual sealing those documents must be registered in Oregon. Ms. Newstetter said it boiled down to the question of whether or not the Energy Star certification process met OSBEELS' definition of engineering. After discussion, it was determined that the review/approval of the SEP is the practice of engineering in the state of Oregon if the SEP is for a building within the state of Oregon. As a result, the seal affixed to the SEP must be of a professional engineer or registered architect registered in the state of Oregon. The Committee directed Staff to respond accordingly. There was no further discussion

#### Meaning of ORS 215.080

Steve Haddock posed a question to the Committee regarding the meaning of ORS 215.080 Power to enter upon land. The portion in question reads:

“The commission, and any of its members, officers and employees, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon.”

Mr. Haddock's question was: What surveys are the planners and their employees capable of performing? Also, what monuments and markers are they placing and maintaining? Are they establishing some kind of boundaries? AAG Lozano researched the statute was prepared to offer advice to the Committee during the meeting. However, while at the OSBEELS office for the April Committee meeting, AAG Lozano discovered documents referencing OSBEELS' legislative history which were not available through other state departments. AAG Lozano will review these additional materials and will make her findings available during the June 2013 Committee meeting. There was no further discussion.

#### New Business

##### As-built (Record) Drawings – Gerald King

Mr. King asked about making changes to original drawings. Mr. King is the city surveyor for Lake Oswego and he supervises the archiving of public works construction as-build plans. He said his office receives construction as-built drawings (record drawings) from both external (private) and internal (city employees) engineers. Most have the registered engineer's stamp on them and some also have the stamp signed. His office would like to make minor additions to these drawings prior to scanning and microfilming. He said they would like to place the address and tax lot on newly created parcels in a plat or partition (these are often not yet known when the drawing is created). For the Asset Management program, he would like to label unit IDs on manholes, catch basins, water valves, and more. His proposal wouldn't change any part of the drawings or the designs contained. He said the additions could be made in ink to set them apart from the AutoCAD drawing.

After discussion, the Committee determined that once a design has been signed and sealed, nothing can be added to it. Staff was directed to draft a response to Mr. King for **full Board consideration**. There was no further discussion.

#### EOR per OAR 820-010-0010 – Daniel Stark

Mr. Stark had a question regarding engineer of record (EOR) determination. He said his firm is considering taking on a project for which the engineering will be done by a firm located in Ireland. He asked if having daily communication via email and weekly web conferencing, instructing the engineers in the design, reviewing calculations and drawings, and making necessary changes will qualify him as having “responsible charge” and being in “direct supervision and control” as defined by OAR 820-010-0010.

After a brief discussion, the members of the PPC concurred that if the engineering work will be completed outside the state of Oregon, then the Board lacks jurisdiction. If the result of the engineering work completed outside the state of Oregon (e.g., in Ireland) is erected in the state of Oregon, it would fall under the jurisdiction of the Building Codes Division.

However, if engineering work designed elsewhere is subsequently constructed in Oregon, with today’s technology, email and web conferencing may qualify as supervision and control as defined in Oregon Administrative Rule (OAR) 820-010-0010(6) provided that subsections (a) through (e) are also followed. The Committee directed Staff to send a response to Mr. Stark. There was no further discussion.

#### Surveyor Ethics – Michael Farthing

Mr. Farthing submitted a letter with exhibits to the Lane County Board of Commissioners regarding a final subdivision plat that was recorded in Lane County’s plat records on December 28, 2012. The letter requested Lane County revoke its approval and acceptance of the plat for the reason that the underlying land use approval of the subdivision was overturned by LUBA. Mr. Farthing questioned if it is ethical, proper, legally binding, or good surveying practice to seek final plat approval and actually file a final plat when there is a possibility that a pending appeal will overturn the subdivision approval. Ms. Newstetter said if any monuments were set, then it falls under the 45-day mandatory filing rule. Registered land surveyors are required to comply with ORS Chapter 672 and OAR Chapter 820. Additionally, ORS 209.250(11) states, “a registered professional land surveyor failing to comply with the provision of subsections (1) to (9) of this section, ORS 92.050 to ORS 92.080 or a county ordinance establishing standards for surveys or plats is subject to disciplinary action by the State Board of Examiners for Engineering and Land Surveying.” ORS 209.250(1) requires the professional land surveyor to submit for filing a permanent map of the survey to the county surveyor for review within 45 days. Furthermore, OAR 820-030-0060 defines the 45-day limit as commencing with the setting of the first monument, not the completion of the project. The Committee directed Staff to send a response to Mr. Farthing. There was no further discussion.

#### Potential Changes to a Report – Matt Cash

Mr. Cash asked about allowing a client to potentially change a report composed by an engineer. He said his client asked to have his report in MS Word instead of a PDF to allow for “cut and paste” abilities. This information would be used for a larger report. He said the client contact is not a registered engineer and the client is a public agency. Mr. Cash referenced OAR 820-010-0010(5)(f) as the reason he can’t comply with this client’s request. Ms. Newstetter said OAR 820-020-0015(10) and OAR 820-010-0622 also apply to this situation. Ms. Frey suggested

sending the document, but keeping a stamped original copy which indicates that the document being used by the client is not a final document, but rather, a working file. AAG Lozano said the situation is tricky because, in other cases, maintaining a stamped original copy might be enough proof, however, for regulatory cases that might not be a lawful practice. AAG Lozano said she would do additional research and present her findings to the Committee during the June 2013 meeting.

NAICS Code – Sharilyn Hildago

Ms. Hildago's situation was similar to the hydrographic surveyors in that her NAICS code choices on her OMWESB application were denied because of lack of licensure. Ms. Hildago is a licensed architect and employs a senior GIS consultant. She is looking to add GIS base mapping services, geospatial mapping services and mapping (except geophysical) services. Staff will continue to work with OMWESB and will attempt to develop a matrix to assist in these efforts. There was no further discussion.

The meeting adjourned at 4:07 p.m.