



Oregon

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

670 Hawthorne Ave. SE, Suite 220

Salem, OR 97301

(503) 362-2666

Fax (503) 362-5454

E-mail: osbeels@osbeels.org

PROFESSIONAL PRACTICES COMMITTEE

Minutes of Meeting

April 13, 2012

Members present:

Sue Newstetter

Steven Burger

Jim Doane

John Seward (excused absence)

Staff present:

Mari Lopez

Jenn Gilbert

Joy Pariante

Others present:

Joanna Tucker-Davis, AAG

The meeting of the Professional Practices Committee (PPC) was called to order at 1:12 p.m. in the conference room of the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) office at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301. Chair Newstetter requested to rearrange the agenda by placing Unfinished Business, Item A. Industrial Exemption at the end. The members of the Committee agreed.

Unfinished Business –

Field Work Classification

Chair Newstetter noted that she viewed the DL Design Group Web site earlier that morning and no revisions were made as previously discussed during the February meeting. *Land Subdivision* and *Surveying and Mapping (except Geophysical) services* were still listed under their Service Specialties. Although the company employs a professional engineer, it was noted that performing *Land Subdivision* work includes boundaries; a service requiring a PLS. It appeared to the Committee that part of the confusion with DL Design Group may be that the Office of Minority, Women and Emerging Small Business (OMWESB) granted a certification to DL Design Group. OMWESB administers programs that are designed to promote economic opportunities for small businesses. One of their certification programs, the Disadvantaged Business Enterprise (DBE), was granted to DL Design Group. This was a point of contention during the February discussion in which the Committee briefly discussed the North American Industry Classification System (NAICS) code that OMWESB designated to DL Design Group. The certification from OMWESB contained the statement, “The following description table indicates the areas (in form of NAIC codes) in which your firm has been approved to perform work; this included NAICS 237210 and NAICS 541370 which relate to *Land Subdivision* and *Surveying and Mapping (except Geophysical) services* respectively. After discussion, staff was

directed to invite representatives from the OMWESB office to the June meeting for additional education regarding the registration requirements in Oregon for professional engineering and land surveying services. Additionally, the Committee determined to refer DL Design Group to the Regulation Department for further investigation.

Equipment Substitution by a Plumbing Inspector

AAG Tucker-Davis provided brief information related to the request from the February meeting regarding the equipment substitution by a plumbing inspector. She informed the Committee that she has conducted research on whether the plumbing laws allow for the recommendation of grease interceptors. AAG Tucker-Davis stated that at this time, there is not enough factual information for her to provide any legal advice, or to determine if there is a potential violation as a result. After a brief discussion, the Committee determined that additional investigation is required.

New Business –

Is This Surveying?

The Committee discussed an email submitted from John Palatiello, along with a Request for Proposal (RFP) solicitation for issued by the United States Department of Agriculture (USDA). Mr. Palatiello is requesting the Committee to review the information in the RFP and inform him if the nature of the work would constitute the practice of land surveying in the State of Oregon. He also noted that some states exempt Federal employees or Federal agency work, but he would like to know if the work would constitute the practice of land surveying regardless of the client. After discussion, the Committee noted that the client does matter and that the Oregon Revised Statute (ORS) 672.060 contains the exceptions to the Board's laws. Nonetheless, ORS 672.002(7) defines the work of photogrammetric mapping and ORS 672.005(2) defines the practice of land surveying. Furthermore, if the work is performed pursuant to an application identified in ORS 672.002(7), then the appropriate professional must be involved. Staff will respond accordingly.

State Parks

The Committee reviewed and discussed an email submitted by Darryl Anderson. Mr. Anderson would like the Committee to review the project plans submitted as he believes the project requires a professional engineer. The project plans were put out by the Oregon Parks and Recreation Department. In reviewing the plans, the Committee noted that portions of the work appeared to require a professional engineer, such as the new pathways, some did not. The maintenance overlays do not require the services of a professional engineer. The Committee further noted that the plans did not contain a seal and signature of a registered professional engineer. It appears that this inquiry is similar to a previous discussion with the Portland Bureau of Transportation (PBOT) where the Committee needed to engage in additional discussion with the agency to determine the process and use of the plans. As a result, staff was directed to contact a representative with the Oregon Parks and Recreation Department and invite them to the June meeting.

City of Medford Electronic Plan Review

The Committee reviewed and discussed a copy of the City of Medford Electronic Plan Review Applicant User Guide. Staff received an anonymous phone call from an individual who

expressed concerns with the User Guide as it appears to violate OAR 820-010-0621(2) - Final Documents. The last page of the User Guide states, “*After final payment is made, you will receive an email indicating that your application has been paid in full. There will be instructions for how to print and download your files. You will need to print one set of plans for the job site. If an architect designed the plan, they must “wet” sign the drawings and if an engineer designed the plan they must either “wet” sign or electronically sign the plan in accordance with Oregon State Law.*” This statement alludes to the City accepting unsealed documents for review. After discussion, the Committee directed staff to invite a representative from the City of Medford to the June meeting for discussion.

SPCC Plans

The Committee reviewed an email submitted by Brett Smith informing the Committee that he prepared a Spill Prevention, Control and Countermeasure (SPCC) plan for a farm in Oregon. At the time he prepared the plans, he was not an Oregon registrant; although he is now registered. Mr. Smith is currently considering ways to approach the Oregon SPCC market and his previous plan came to mind that prompted his email to staff. Most jurisdictions in the United States do allow registered professional engineers (even though they may not be registered in that jurisdiction) to prepare SPCC plans for facilities in the state, based upon the permissive language in the preamble of the Federal Spill Regulation. **Chair Newstetter took the Committee into Executive Session as provided by Oregon Revised Statute (ORS) 192.660(2)(f) to discuss the advice provided by AAG Tucker-Davis.** The Committee was provided with a confidential memorandum from AAG Tucker-Davis regarding the preparation of SPCC Plans. **Upon returning to open session, it was noted that no action was taken during Executive Session.**

The Committee, along with AAG Tucker-Davis, discussed the federal requirements regarding state licensure for the preparation of SPCC plans. The Committee did not discuss the licensure requirements for a SPCC plan if submitted to an Oregon regulatory body, such as the Department of Environmental Quality. The conclusion was that the federal requirements: 1) do not require that the professional engineer visit the facility itself. It is unclear that the examination itself of the facility would necessarily constitute engineering work, opposed to the analysis of the observations of the facility and the development of the plan; 2) do not require the analysis, approval, and certification of the SPCC plans to be performed in the same state that the facility is located. Furthermore, the certified plans may be submitted to a regional coordinator that is located in a different state from where the facility is located. In sum, it could be that the professional engineer who certifies federal SPCC plans for a facility in Oregon may never step foot in the state, complete the work in the state, or submit documents to an entity in the state. Additionally, ORS 672.060 provides exceptions to the Board’s laws and the federal laws take precedence over the state laws. Staff will respond accordingly.

Stamped Plans by the Federal Government

Chair Newstetter took the Committee into Executive Session as provided by Oregon Revised Statute (ORS) 192.660(2)(f) to discuss the advice provided by AAG Tucker-Davis. The Committee was provided with a confidential advice from AAG Tucker-Davis regarding stamped plans by the federal government. **Upon returning to open session, it was noted that no action was taken during Executive Session.**

The Committee reviewed the email submitted by George Kolb. Mr. Kolb has concerns for the County in which he is employed due to their acceptance of unsealed plans submitted by the Forest Service. He informed the Committee that plans are for the replacement of culverts with Federal funds and does not want the County to lose the opportunity to replace these culverts, but does not want to jeopardize his registration or put the County at risk of liability in the event of a structural failure. One culvert will be replaced by a bridge and another culvert will be replaced by a concrete box culvert. AAG Tucker-Davis stated that the Board cannot provide legal advice on liability insurance or the issues of liability to the County. However, she did contact Tim Binder, federal attorney for the Western Federal Lands Highway Division, who provided her with a memorandum approved for sharing with Mr. Kolb. In sum, the Supremacy clause of the United States Constitution provides that the federal laws are dominant over the laws of the state. Although there are some exceptions, the federal authority has made clear that the state cannot regulate its employees by requiring state licensure for federal employees creating plans for the forest highway program. Staff will respond accordingly and provide Mr. Kolb with a copy of the memorandum from Tim Binder.

Industrial Exemption (use of “engineer” in job title)

The Committee determined to table the discussion related to the topic of industrial exemptions until sufficient time is available. Due to the large volume of reference material, the Committee determined to table the discussion related to the topic of industrial exemptions until all members have had time to fully read the reference material. Equally important, not all members of the Committee have been present and participation by all members is needed for discussion. There was no further discussion.

The meeting adjourned at 2:17 p.m.