

OREGON STATE BOARD OF GEOLOGIST EXAMINERS

WORK SESSION

MARCH 9, 2012

THE ASSOCIATION CENTER, 707 13TH ST. SE, 2ND FLOOR, CONFERENCE ROOM "A", SALEM, OR

Members Present:

Mark Yinger, RG, Chair
Rodney Weick, RG, CEG, Vice Chair
Richard Heinzkill, Public Member
Vicki McConnell, PhD, RG, State Geologist (from 9:30 AM)
Peter Stroud, RG, CEG

Members Absent (Excused):

Todd Jarvis, PhD, RG, CEG

Staff Present:

Christine Valentine, Administrator

Guests:

Kyle Martin, AAG, DOJ (as noted in minutes)

Chair Yinger called the work session to order at 8:35 AM. Members Weick, Heinkill and Stroud were present. Chair Yinger explained that Member McConnell would arrive in about 1 hr. and that Member Jarvis has been excused due to an unavoidable schedule conflict. The Board's legal counsel, Kyle Martin, was also present. No other visitors were present.

Review of Compliance Cases

Chair Yinger opened discussion of the first agenda item. Administrator Valentine and Compliance Chair/Member Heinzkill explained that the Board has 5 cases to discuss during the work session and that the AAG is participating in the discussion of a couple cases to present written legal advice to the Board and otherwise provide counsel. As a result, the Board needs to enter into Executive Session.

At 8:36 AM, the Chair announced that the Board was entering Executive Session for the purpose of considering records or information exempt from disclosure by law, including written advice from the Board's attorney, as authorized under ORS 192.660(2)(f) and for consultation with legal counsel as authorized under ORS 192.660(2)(h).

At 10:44 AM, Chair Yinger announced that the Executive Session was concluded and reconvened the Board in regular public session. The Board did not make any decisions in Executive Session; any further action on the cases discussed during Executive Session (CC#10-04-013 and CC#11-06-018) was deferred to the Quarterly meeting.

Member Heinzkill stated a general question about the procedural step of going back to the respondent or a Technical Reviewer (TR) to request additional response or information. He asked AAG Martin what kind of procedure the Board should put in place about this part of the process since it has been a recurring issue and often advised by legal counsel as a necessary step. AAG Martin encouraged the Board to use this procedural step when necessary and prudent but stated that the Board did not need to have this addressed

in rule. AAG Martin explained why he often advises the Board to loop back to a respondent. If the Board finds something that appears to be a violation, then the respondent should always be given the opportunity to supply information about the situation to the Board. If the Board does not provide this type of opportunity, then it could go down the path of proposing disciplinary action and in the contested case process discover new information that changes the whole case. This can result in spending a lot of time and money and then not even having a case. His advice applies equally to considering when to ask TRs for further information or clarifications.

Member McConnell noted that the Board needs to discuss how to expedite the compliance process between meetings. Member Heinzkill agreed that case times have been too long in the past. Chair Yinger noted that part of the problem is that the Compliance Committee does not involve a person with technical expertise. Member McConnell reminded the Board that it previously had individual board members assigned to conduct reviews but has always had the public member as the Compliance Committee Chair. Member Heinzkill stated that the new process avoids the challenge of the Administrator having to talk with multiple board members to track down where a case is at in the investigation process. He also noted that the Board needs to be cognizant about the public meeting law. AAG Martin suggested that the Board find a way to move the investigation process along more in between board meetings. He has observed that the Compliance Committee has to wait to get direction on how to proceed at Board meetings. He sees most Boards having a more formal compliance committee that includes a technical person on that committee and then by rule delegation of authority to the compliance committee to take specific actions. Member McConnell stated that historically, even when Board members were assigned the reviews, the Board would still find that it was not prepared to move cases along between quarterly meetings. A big part of the problem was that Board members did not have the time to work on cases between meetings.

Member Heinzkill asked AAG Martin and the rest of the Board about having a member of the Board serving as a technical advisor to Compliance Committee and whether that Board member would then encounter problems in the decision making of the Board. AAG Martin commented that the process would need to be structured such that an advisor on a case cannot make recommendations to the Board, only to the committee. He further stated that the advisor would be like a witness and may need to recuse him or herself from votes. Member McConnell asked the AAG for clarification about process changes that can be made without rulemaking. Administrator Valentine and Member Heinzkill suggested that the Board needs to update the compliance rule anyhow to address other issues. They reminded the Board about discussions in 2011 work sessions about moving from a Compliance Committee to a Compliance Coordinator and clarifying that the Committee (or Coordinator if changed) is not making recommendations on behalf of the Board. AAG Martin agreed that the Board needs to ensure that the Compliance Committee (or coordinator) is not given the authority to make recommendations on behalf of the Board due to issues that could arise with the public meetings law.

Chair Yinger called for a brief break at 11:10 AM, reconvening the Board a few minutes later. AAG Martin left the meeting at this juncture.

Administrator Valentine reminded the Board that additional compliance cases needed to be discussed. The Board proceeded to discuss cases **CC#11-08-001A & B**. The Board focused its discussion on a memorandum dated January 29, 2011 from Board Chair Yinger. As a reminder, Administrator Valentine stated that the Board first reviewed documentation for this case at the December 2 work session and did not take action, determining that continued investigation was required. The Board assigned Chair Yinger, with assistance as needed from Vice Chair Weick, to review case materials plus look at related records from a past case to determine if the non-registrant practiced geology without registration. This review has been accomplished with the results captured in the subject memorandum. Chair Yinger proceeded to present the memorandum and explain his findings. He stated that his view is that the work did not involve the public practice of geology and therefore the RG did not need to retroactively sign the report in

question. The Board then discussed what its finding should be in this case and settled on allegations unfounded. A motion will be needed in the quarterly meeting to close the case in this manner.

The next case discussed was CC#11-09-002 (also tentatively assigned as 002A and 002B at December 2, 2011 meeting). Administrator Valentine reminded the Board that it first reviewed documentation for this case at the December 2, 2011 work session. The Board did not take action in December, instead determining that continued investigation was required. The Board specifically requested that the second person signing the report in question be contacted about his role in the project report. His response is enclosed for the Board's consideration. The Board also asked the Administrator to pursue a public records request with DEQ for Phase II environmental site assessment reports prepared and submitted within the past 5 years by the company involved. The status of the public records is that only one additional record has been obtained, and this record is a Phase I report by the company for the same site as addressed by the Phase II report that is the subject of the complaint. Based on discussion with DEQ staff assisting with the records request and as discussed individually with Member Heinzkill and Vice Chair Weick, no further records request was made. The Board needs to consider the outcome of the public records request in relation to how to proceed with this investigation.

Chair Yinger inquired about whether a TR was secured to review this case. Administrator Valentine and Member Heinzkill reminded the Board about its conversation about this at the December 2, 2011 work session. The case was brought to the Board for review without going to a TR as the key question appeared to be whether the respondent publicly practiced geology without registration, not whether there was a violation by a registrant. The thought was that the Board would determine if the case involved the public practice of geology and not generally ask a TR to evaluate that type of question.

Member McConnell asked whether the Board can, based on the public records request, conclude anything about the respondents doing similar work at other sites. Vice Chair Weick and Chair Yinger said no the Board cannot make that kind of conclusion. All the Board can conclude is that the company did not do this kind of work in other situations with a regulatory nexus that triggered a report to DEQ, but such work could have been done for private clients.

The Board then focused on the issue of whether there has been the public practice of geology by the respondent and his colleague. Chair Yinger thinks the project did include the public practice of geology because of the description of subsurface geology found in the boring log. Vice Chair Weick said the Board needed to discuss this point, e.g. is just describing the site geology public practice or does there need to be interpretation of results. He suggested that if a person evaluates the nature of the site geology, then this is the public practice of geology. But if a person is just sampling and giving yes/no answers about whether contamination is found, then this is not the public practice of geology. Board members discussed whether the individuals involved in preparing this report did any original interpretation of geology. Also discussed was that the report includes descriptions of the geologic setting. The descriptions may be derived from outside sources although references are lacking in the report. Chair Yinger noted that in the past the Board has said that just using general information about geology of site is ok although the source of information should be referenced. Member McConnell noted that the respondent's colleague says no practice of geology was intended but points out that it is unclear whether work under the soil matrix cleanup standards equates to public practice of geology. She reminded the Board that the soil matrix issue has come up before as an area of confusion.

Chair Yinger noted that this is a Phase II where they did more than just use general information about the geology of the site but actually developed a conceptual site model to guide sampling. His view is that this work therefore involved the practice of geology. Vice Chair Weick agreed that this work would start to cross the line into geologic interpretation. Member Stroud stated that his view is the work done is right on the edge of practice. Member McConnell suggested that the Board write a letter to the respondents

explaining that the Board finds they are walking very close to the line with regard to public practice of geology. This letter could strongly recommend that they bring in a RG for future projects and would be addressed to the respondent and the report co-signer. The Board members agreed that a motion to this effect could be proposed in the quarterly meeting. Chair Yinger volunteered to help with drafting any such letter to help define public practice of geology and explain why ASTM guidance is not relevant here.

Administrator Valentine and Member Heinzkill provided the Board with a brief update on the open compliance case CC#11-12-003. A technical reviewer has been secured to assist in review of the case but that report was not available for discussion with the Board today. Therefore, this case will need to be discussed at the next meeting.

Rules Review

Chair Yinger opened discussion on work session agenda item and asked the Administrator to address procedural issues related to the rulemaking process. Administrator Valentine noted how thorough the Board has been in adopting motions that specify the precise version of each rule approved for formal rulemaking. She has learned however that the Board would benefit from more carefully wording of motions with respect to direction to the Administrator to initiate rulemaking notice. This can be accomplished by having the Board explicitly include in its motions that it approves a specified version of a rule AND directs the Administrator to initiate the formal rulemaking notice. This step is advised to help ensure that the record is crystal clear about the Board giving authorization for formal rulemaking. She recommends that the Board consider an amended motion in the quarterly meeting stating that the Administrator is directed to initiate formal rulemaking for all draft rules approved by the Board in the Sept. 9, 2011, December 2, 2011 and today's meeting.

Administrator Valentine next shared information with the Board about a recommendation she made to Chair Yinger, who is also the Rules Advisory Committee Chair, for some minor but important changes in how the Rules Advisory Committee operates. From here on out, the advisory committee should be asked to specifically respond to fiscal impact questions in addition to being asked to review the technical merits and clarity of proposed rules. She also recommends that the Board continue to hold formal meetings of the rules committee (teleconference with notice is fine, does not have to be face-to-face). These adjustments will allow the Board to meet the requirements for a rules advisory committee as defined in the Oregon Administrative Procedures Act (APA). This will give the Board better protection from delays in formal rulemaking that can be more easily triggered by those in opposition to proposed rules if the Committee does not meet the definition of advisory committee under the APA.

Having addressed the procedural issues, Administrator Valentine next introduced discussion on the "Responsible Charge/Registration" rules that have been under discussion for the last several meetings. As per Board direction given at the December 2, 2011 meeting, she met with AAG Martin to review the full suite of draft rules approved by the Board as part of this rules project. The AAG did not raise any major concerns but did make recommendations that are presented in the packet for the Board's consideration. Chair Yinger and Administrator Valentine felt that the Board would be interested in considering the AAG's advice before formal rulemaking is initiated and are hoping for a quick review and discussion of just those changes proposed by the AAG. She stated there is no intent to have the Board re-evaluate all the work done over the last several meetings. The Board reviewed the changes suggested by the AAG and after some brief discussion reached consensus on supporting all changes recommended.

Administrator Valentine next addressed the request for the Board to conduct its first discussion about amending the "Compliance" rule as suggested in the draft rule contained in the meeting packet. She reminded the Board of previous discussions about how the compliance committee functions and ensuring that communications between the Compliance Chair and Administrator about case investigations are not

subject to the public meetings requirements. The Board clarified in these discussions that the Compliance Committee does not make recommendations to or decisions for the Board but instead processes complaints and prepares investigatory materials for the Board. The Board also talked about whether the Board has a compliance committee or compliance coordinator. Directly related to this conversation, the Board talked about whether the Administrator should really be a committee member vs. staff to the committee or coordinator. The compliance rule was examined to see how these issues might need to be addressed and that review resulted in the draft in the meeting packet. Administrator Valentine explained that she shared the potential changes on separate occasions individually with Member Heinzkill and Chair Yinger to obtain feedback. The draft includes suggestions made during these one-on-one conversations. She wondered whether any further changes to the rule might be necessary.

The Board determined that the rule should be amended and proceeded to discuss the proposed changes as drafted. The Board asked for a change in (5) to clarify that complaints will be processed and investigated through the Compliance Coordinator. The Board also spent some time reviewing (5)(d) and concluded that this language seems to capture guidance provided by the Board's AAG during past compliance case discussions, including those of this day.

Before closing discussion on this agenda item, the Board asked the Administrator to also work on possible changes to Code of Professional Conduct as per discussion with the AAG earlier in Executive Session. This drafting work would involve the AAG and also Chair Yinger in his role as Rules Advisory Committee Chair.

Policies/Procedures

Chair Yinger decided to move the Board Committee assignments and work plan to last on the work session agenda and asked the Administrator to proceed with an update on Board policies and procedures and to explain the request related to the OSBGE stipend policy. Administrator Valentine updated the Board on where she is at with the policies/procedure work and that there are no revised or new policies being presented to the Board at this time for final review and action. This agenda item was added as a placeholder in case any policies were ready for Board action in the quarterly meeting. While some policies are close to final draft form, the decision was made in consultation with Member McConnell to not yet present policies for final Board approval but to further work through some outstanding issues. Member McConnell explained how she has been communicating with the Administrator on this front and talked about the importance and complications of this effort.

Stipend Policy Release

Administrator Valentine explained that she is simultaneously working on policy updates for the Oregon State Landscape Architect Board (OSLAB) and has noticed that they need to prepare a stipend policy. She would like to share the advice OSBGE received from the AAG about stipends as it is also fully applicable to OSLAB. However, she first wants OSBGE's agreement to this and also needs to know if OSBGE is concerned about the loss of attorney-client confidentiality for this advice. She further explained that the Board can still authorize sharing the advice in a manner that maintains confidentiality by making an appropriate motion in the quarterly meeting. That motion would need to be in the form of the Board moves to share the confidential attorney-client privileged advice memo on stipends dated 10-24-06 with the OSLAB in a manner and with direction that preserves the privilege and confidentiality of the advice. The advice would then be shared with OSLAB in Executive Session of that Board. The Board briefly discussed and concluded that it was in the public interest to share the advice with OSLAB and furthermore there was no reason to be concerned with maintaining confidentiality of this advice.

Chair Yinger called a quick break so that Board members and staff could grab lunch before starting discussion on the last work session agenda item. The meeting was resumed about 10 minutes later.

Board Committee Assignments

Chair Yinger opened discussion on the last agenda item for the work session. Administrator Valentine referred the Board to the draft list of committee assignments in the packet noting that changes are required to address the departure of two Board members. She deferred to Chair Yinger about other reasons the Board may want to update committee assignments. The Board confirmed assignments as:

Budget Committee: Administrator Valentine, Chair
Chair Yinger
Member McConnell

Compliance - move to a separate section called Other Assignments since the Board is heading towards having a Compliance Coordinator. Member Heinzkill remains as the coordinator.

Engineering Geology Exam Committee: Vice Chair Weick, Chair
Member Jarvis

Confirm that Chris Humphrey is willing to remain a committee member now that he is off the Board.

Geology Guidelines (3 Separate Committees or Other Approach?)

The Board discussed that it needs to determine where this effort is going before updating committee assignments. The Board concluded that this will need to be discussed in a stand-alone work session to develop an action plan, perhaps as an additional half-day tacked on to a regular meeting day.

Joint Compliance Committee: Vice Chair Weick, Chair
Member Stroud (notify OSBEELS of this addition)

Confirm Gary Peterson is willing to remain a committee member. If not, then the Board needs to find another non-board CEG or could ask Member Jarvis to serve on this committee.

Legislative Committee: Member McConnell, Chair
Other members to be determined on as needed basis

Outreach Committee: Member Jarvis, Chair

Already confirmed Steve Taylor will remain a committee member even though now off the Board.
Other members to be determined on as needed basis

Professional Practices: Chair Yinger, Chair
Member McConnell

Other members to be determined on as needed basis

Rules Committee: Keep this as is (Yinger as Chair, already updated the roster of registrants participating.)

Adjournment

Chair Yinger closed the work session at 12:43 PM

OREGON STATE BOARD OF GEOLOGIST EXAMINERS

QUARTERLY MEETING

MARCH 9, 2012

THE ASSOCIATION CENTER, 707 13TH ST. SE, 2ND FLOOR, CONFERENCE ROOM "A", SALEM, OR

Members Present:

Mark Yinger, RG, Chair
Rodney Weick, RG, CEG, Vice Chair
Richard Heinzkill, Public Member
Vicki McConnell, PhD, RG, State Geologist
Peter Stroud, RG

Members Absent:

Todd Jarvis, PhD, RG, CEG

Staff Present:

Christine Valentine, Administrator

Guests:

Mike Dewey, RG, CEG (as noted in minutes)

At 12:45, Chair Yinger opened the Quarterly Meeting immediately after the Board's work session. No guests were present at this time.

Agenda Review: Review, Additions and Approval

Yinger

Chair Yinger guided the Board through a review of the meeting agenda. Administrator Valentine and Chair Yinger proposed two additional items under Correspondence: AC 12 02 003: 2/28/12 E-mail to Board Administrator re: Compliance Rule and AC 12 03 004: 3/1/12 Letter: Appeal of Cooperative Registration Decision. Chair Yinger then asked if there were any objections, other additions, or comments. Member McConnell noted that she would share information regarding continuing education under Old Business. *Vice Chair Weick moved to accept the revised agenda. Member Heinzkill seconded the motion. Chair Yinger called for discussion and hearing none called for a vote. All approved the revised agenda.*

Minutes:

Yinger

Chair Yinger asked for any further changes or edits to the December 2, 2011 meeting minutes. Member Stroud noted one typo on p. 11. Hearing no other requests for revisions, the Chair asked for a motion. *Member McConnell moved to adopt the meeting minutes for the December 2, 2011 work session and quarterly meeting as revised. Member Stroud seconded. The Chair, hearing no discussion, called for a vote and all approved the minutes as revised.*

Administrator Report

Valentine

a. Administrator Report

Administrator Valentine presented her report and stated that she would go through page-by-page as this has seemed to be working good for the Board. Board member questions and comments were addressed for the following topics:

Page 1: Member McConnell commented on Administrator's work on Board policies. She explained that this is a work in progress and why this work is important.

Page 2: Administrator Valentine explained the ongoing process to assess options and costs for a new printer/copier. She expects a decision to be made very soon as the lease on the current copier/printer is up in April. The Board offered support for whatever staff determines will best meet the needs of the office.

Administrator Valentine briefly addressed the work that lies before staff with respect to records policy and management. Member McConnell explained how this process works under the law and how agencies implement. She supported the Administrator's work to draft a policy and noted that it is important for the Board to try its best to do the right thing when it comes to records management.

Page 3: Administrator Valentine explained her request for staff training, and the Board was supportive. *Vice Chair Weick made a motion to approve the training plan and split training costs with the Oregon State Landscape Architect Board. Chair Yinger seconded the motion. Member McConnell requested clarification that Member Heinzkill could also sign up for the DOJ investigator training given his role as Compliance Coordinator. This was confirmed as approved subject to Member Heinzkill's decision. Chair Yinger called for a vote, and all approved.*

Page 4: The Board members had no comments on this page.

Page 5: The Board discussed staff's research on the costs of online payments. Chair Yinger did not think the Board should proceed with offering online payment due to the costs associated with this. Member McConnell asked the Administrator for some clarifications and noted the Board would need to make multiple decisions including should costs be covered by convenience fees, absorbed, or would renewal fees need to increase. She suggested the Board would need to figure these things out and clearly show that costs could not be absorbed before instituting a convenience fee or raising renewal fees. Member Heinzkill asked about other boards, and Administrator Valentine shared what she has learned from other Board Administrators about convenience fees and popularity of online payment. She also mentioned that online payment has been a first step for some boards that have moved or are in the process of moving to full online renewal. The Board settled on including an article about what the research has revealed in the next newsletter. The article will address the possibility of a convenience fee and could ask also about interest in full online renewal.

Chair Yinger noted that the Board needs to decide about an outreach meeting. Administrator Valentine reminded the Board that the last outreach meeting occurred a year ago at Western Oregon University. At the December meeting, the Board discussed Portland State University as a possible next stop for an outreach meeting. The Board concluded that it wants to hold the December 2012 meeting at Portland State and instructed the Administrator to contact Dr. Scott Burns about this idea. He can provide a point of contact to help facilitate the outreach event.

Page 6: The Board members had no comments on this page.

Page 7: The Board noted that it would discuss ASBOG issues later on the agenda.

b. Updated Revenue/Expense Report for Current Biennium

The Board reviewed the financial information but did not have any questions for discussion.

c. Approve Check logs - Pioneer Trust and ADP

The Board reviewed the log. *Vice Chair Weick moved to approve check log for 11/21/11 – 2/23/11 for debits 11/23-2/1/12 and check # 3390-3423, 9153-9158. Member Stroud seconded the motion. Chair Yinger, hearing no discussion, called for a vote, and all approved.*

d. 3-Year Comparison of Changes in Monthly Renewals and Examinations

The Board reviewed the information and briefly discussed.

e. Update on Edward Jones Investments

The Board reviewed the information but did not have any questions for discussion.

Compliance Report

Heinzkill

Member Heinzkill read from the Compliance Report into the record for each case.

CC #10-04-013: Complaint is that RG is guilty of negligence because care, skill and diligence not shown as RG has been billing client for unnecessary work in monitoring groundwater for several years.

Motion: *Vice Chair Weick motioned to withdraw the previous motion from December 2, 2011 regarding issuance of a Notice of Intent (NOI) and moved to instead direct the Administrator to issue a Settlement Proposal (SP) that will require:*

- *on-campus or on-line introductory course of hydrogeology, including laboratory assignments, from an accredited institution of higher education,*
- *to be successfully completed by June 30, 2013, and*
- *requiring a report to the Board about how the learning will be incorporated into the respondents practice to be delivered to the Board by the first meeting after June 30, 2013.*

Vice Chair Weick further included in the motion that if the SP is not accepted, then the Board will issue a NOI imposing a \$1,000 civil penalty and a Letter of Reprimand. Member Stroud seconded the two motions. Chair Yinger called for discussion. Hearing no further discussion, he called for a vote, and all approved.

At this time, Chair Yinger welcomed Mike Dewey, RG/CEG as a visitor to the Board. Mr. Dewey explained that he was present to talk about his recent correspondence to the Board. He was given a copy of the agenda so that he could see where the Board was on the agenda and was welcomed to stay while the Board continued with the agenda items prior to Correspondence.

Member Heinzkill continued with the Compliance Report.

CC #11-06-018: Site investigation report for a community college is deficient.

Motion: None, continued investigation

CC #11-08-001A: Complaint is against two companies who conducted a Phase One Environmental Site Assessment. Among concerns expressed by the complainant are: 1) report contained “several internal inconsistencies and contradictions;” 2) respondents “encouraged” onsite remediation which was done and

which the client says he later discovered would have not been necessary; 3) there is not a clear statement of a firm's involvement in the project. (This complaint is against company one.)

CC #11-08-001B: This complaint is against the second of the two companies mentioned in CC #11-08-001A.

Motion: The two cases were addressed in one motion. *Vice Chair Weick moved that the allegations are unfounded, case is closed. Chair Yinger seconded. Hearing no discussion, Chair Yinger called for a vote, and all approved.* Administrator Valentine clarified that a case closing letter will be issued as in past cases involving a finding of allegations unfounded.

CC #11-09-002A: Complaint is that Phase II Environmental Site Assessment was submitted without the requisite RG stamp and signature.

CC #11-09-002B: Complaint is that Phase II Environmental Site Assessment was submitted without the requisite RG stamp and signature. This concerns second signature.

Administrator Valentine clarified for the record that case B was never formally opened as a separate compliance case. The second person was simply asked for a response.

Motion: *Member Stroud motioned to issue a Letter of Concern to both parties involved stating that they should have a professional geologist involved in similar future projects due to concerns about crossing the line into the public practice of geology. Vice Chair Weick seconded the motion. Chair Yinger called for discussion and hearing none called for a vote. All approved. Chair Yinger agreed to assist with drafting this letter.*

CC #11-12-003: Complaint is that RG has provided professional services outside of his qualifications by training or experience in the construction of roadway.

Motion: None, continued investigation.

Committee Reports

Administrative Rules

Yinger

Member McConnell motioned to approve for rulemaking the AAG recommended changes to draft rule OAR 809-003-0000 Definitions as presented in the March 9, 2012 revised rules (V. 4, p. 2-3) and further moved that the Board approve for rulemaking the AAG recommended changes to draft rule OAR 809-050-0000 Use of Seal as presented in the March 9, 2012 revised rules (V. 4, p. 9). Vice Chair seconded, but then asked for clarification about whether the motion captured the definition for the term responsible charge proposed by the AAG. This was confirmed as included, and Vice Chair Weick did not amend his original second of the motion. Chair Yinger, hearing no further discussion, called for a vote, and all approved.

Chair Yinger motioned to authorize the Administrator to proceed with formal rulemaking for the rules approved by the Board at the September 9, 2011, December 2, 2011 and March 9, 2012 quarterly meetings. Vice Chair Weick seconded the motion. Chair Yinger called for discussion and hearing none called for a vote, and all approved.

Joint Compliance Committee

Weick

Administrator Valentine noted that 2012 meeting dates are set for the JCC in May, August, and November. February was cancelled as nothing was ripe for JCC action. She reminded the Board that there are currently two open compliance cases involving the JCC: CC#11-06-018 has been to JCC with no further committee action anticipated and CC#11-12-003 was first discussed at JCC as an OSBEELS case with the Board opening a parallel case at the December 2, 2011 meeting. This case will need to go back to JCC, with OSBGE and OSBEELS staff targeting the May meeting, but the final scheduling decision will be dependent on progress made between now and then in the parallel reviews of OSBGE and OSBEELS.

Member Stroud requested that Administrator Valentine send the meeting dates to him by e-mail after the meeting.

Legislative

McConnell

Member McConnell provided a quick update on the now concluded 2012 legislative session. She asked if any board members had any particular questions about the session and hearing none proceeded to the next committee item. She noted that the top priority item for discussion is about legislative concepts (LC). Administrator Valentine referred the Board to the memorandum about LC in the meeting packet. As the memorandum explains, the Board needs to decide very soon if it will pursue any LC for the 2013 session.

The Board discussed the possibility of pursuing again a LC for immunity language. Member Heinzkill stated that he is in favor of pursuing the LC again but would like to review the language proposed by the American Civil Liberties Union (ACLU). Administrator Valentine presented what she had regarding the specific language suggested by ACLU for the immunity clause and confirmed that it is different than the LC language submitted for the 2011 session. Member McConnell asked does the Board want to pursue this now and if so, are we prepared to carry out the action items listed in the memo. She noted that the Board and staff will have to move very quickly to pursue these actions prior to the LC filing deadline of May 1. Administrator Valentine explained that she can play only a limited role in legislative process, i.e., cannot act as a lobbyist. Registrants will likely need to step up and help explain the importance of the proposed change to volunteers and board members. One idea is to get those serving in the past as technical reviewers to engage in the legislative process. Chair Yinger called for a straw poll, and all thought the Board should again pursue an LC for an immunity clause. The Board was not prepared to debate final language for the LC and determined that a special meeting would be needed in April to review and approve final language for the LC submittal.

Outreach

Valentine

Administrator Valentine mentioned that the Winter 2012 newsletter went out; it was the second issued in the new format. Feedback about the new format has been positive. The next newsletter (Spring edition) will go out probably in April. Chair Yinger and Board Member McConnell have both indicated that they may have articles to contribute to the spring newsletter. Staff also would like the Board's input on including some kind of series that would profile each Board member. This would not have to be a biographical sketch but could instead perhaps be in the form of Board member response to a couple of questions or sharing something particularly interesting from professional experiences. The idea is to help registrants feel some connection to Board members and provide a sense of member talents and interests. Vice Chair Weick was volunteered as the first member to profile so that he could address his experience on the Board before his second term concludes at the end of the year.

Professional Practice

McConnell

Member McConnell informed the Board that there was nothing to report for this committee. She did offer a suggestion that this committee be tasked with looking at the continuing education question. Member Stroud asked how this topic might be addressed. Member McConnell shared her vision that the Board

would agree to pursue the concept, then would do research into what other states require, engage registrants in discussion of the pros/cons, figure out how continuing education could be structured, and then finally get to the point of considering draft legislative language. All agreed that legislation would most likely not be ready for the 2013 session. Member McConnell and Administrator Valentine both reported making contact with AEG OR and asking to be kept in the loop as that organization recently asked its members for feedback about continuing education.

Chair Yinger called for a break at 3:05. He reconvened the Board at 3:18, and the Board began its discussion of Correspondence.

Correspondence

Yinger & Valentine

AC 11 12 001, Overlapping Practice Engineering Geology vs. Geotechnical Engineering

Administrator Valentine handed out the 2nd page of the e-mail, which was inadvertently not included in the meeting packets. Administrator Valentine asked the Board to review this e-mail from the city of Medford. She explained that she had individual conversations with Member McConnell and Vice Chair Weick about how to respond to this inquiry. Both indicated that the full Board needed to discuss the correspondence. Staff needs direction about how to respond. Vice Chair Weick noted that geotechnical engineers are trained in soil mechanics but not in the evaluation of geologic hazards. Evaluation of geologic hazards is specific to engineering geologists. He is concerned that the city appears to be allowing RGs to do this work when only CEGs have this specific expertise. He suggested that the city should not allow RGs or geotechnical engineers to evaluate geologic hazards. Member Stroud stated that he concurs but also believes the current ordinance requires report elements that fall in the realm of geotechnical engineers and not RGs or CEGs. The Board members discussed and concluded that the Board needs to respond in a manner that is clear about what a CEG and geotechnical engineer can do. If the content standards required of the city for the subject reports requires a blend of engineering geology and geotechnical engineering, then this is what the Board needs to say to the city. The Board also determined that it would give OSBEELS the opportunity to review the OSBGE letter. The letter would then be finalized after asking for OSBEELS input and receiving a response or determination that OSBEELS would not comment. Member Stroud volunteered to work on the letter. Administrator Valentine was directed to contact the city employee that submitted the correspondence to inform him that the Board is drafting a letter and consulting with OSBEELS with the goal of developing guidance that is agreed to by both boards.

AC 12 01 002, CEG Exam Scores & Work Experience Standards

Administrator Valentine referred the Board to the letter in the meeting packet. This individual has requested a response to his letter. Vice Chair Weick invited the Board's guest to clarify whether his concern is having the Board adopt the same standards as WA for qualifying work experience. Vice Chair Weick explained that the Board has been discussing issues of responsible charge and also looking at allowing a combination of supervised and responsible charge work experience for CEGs. He explained that currently the rule requires either 3 years supervised or 5 years responsible charge work experience. Mr. Dewey stated that he feels that the Board has been inconsistent granting experience credits to applicants for the CEG exam over the years. He also noticed that the WA board is more lenient about the type of experience allowed to qualify for the exam. Administrator Valentine read to him the proposed rule changes about allowing a combination of supervised and responsible charge work experience. He expressed appreciation of the Board trying to provide for more flexibility. He stated that he was eventually allowed to sit for the exam even though he did not believe that he had any more qualifying experience than he did when he first applied. Member McConnell explained that it was another issue that brought the issue of combining work experience to the Board's attention in the process of reviewing the draft rules. Mr. Dewey explained that back in 2003 the Board's response to his application was that it had

no discretion to approve it. Member McConnell noted that the Board now has more experience with the CEG exam, and that time will tell if the rule change now proposed will be successful.

Mr. Dewey expressed to the Board his continuing interest in having his actual (numeric) exam score released. He still thinks the Board is obligated to release the score. Vice Chair Weick suggested that the Administrator could find out if the numeric score can be released if a public records request was submitted. Mr. Dewey said he thinks every person deserves to see the numeric score. Member McConnell explained why the Board does not see how a numeric score helps, especially with the CEG where the passing cut score varies by the exact exam instrument used. Mr. Dewey explained that part of his concern about the score is that he wanted to use the score to show that his combination of experience in 2003 was adequate and that the Board should be more flexible with future applicants for the CEG exam regarding qualifying experience. He said he feels a little better about not having the numeric score if the proposed rule changes go through. He explained that his objective is to ensure things work better for future applicants for the CEG exam and thanked the Board for listening to his concerns.

AC 12 02 003, Comments related to Compliance Rule

Administrator Valentine handed out a copy of e-mail exchanges she had with an individual expressing interest in the Board's discussion about the compliance rule. Chair Yinger offered that the Administrator properly shared the draft rule changes with this individual. The Board then briefly discussed the issues raised, noting that these would need to be further discussed as work on the compliance rule moves forward. Topics touched on were the statutory requirement for complaints to be in writing (i.e. apparently not allowing for anonymous complaints) and the extent to which the Board can compel a non-registrant to respond vs. requesting a response. Registrants have agreed to comply with code of professional conduct, which means they must respond to Board requests.

AC 12 03 004: Appeal of Cooperative Registration Decision

Administrator Valentine handed out a copy of the letter to the Board and explained that this individual took the ASBOG practice section but not the fundamentals section. His application was denied because Board rules require passing the ASBOG national examination where examination is defined as the Fundamentals and Practice sections. Staff could not find any other option under current Board rules. The Board discussed and ultimately agreed with staff action. The Board members discussed that this issue of waiver of the Fundamentals exam section has never come up and that the Board is not going to change the rules. The Administrator should invite the applicant to sit for the next Fundamentals exam which is in October of this year.

New Business

Yinger

Chair Yinger noted for the record that there is no new business to discuss.

Old Business

Yinger & Valentine

Financial Review Final Findings & Pending Report to the Legislature

Administrator Valentine presented the two reports. She started with the Financial Review and staff recommendations about implementing the recommendations from the review. The Board discussed staff recommendations and generally agreed with staff recommendations. The Board did direct the Administrator to develop a new timesheet system, which was marked as pending (meaning under review) in the staff recommendations. Administrator Valentine also explained the link between the financial review and the pending report to the Legislature. She stated that the Board has not reviewed past reports but requested this opportunity after submittal of the last Report to the Legislature. She therefore worked to get a draft ready for Board review so the Board could discuss at the March meeting. Noting the time of day, Chair Yinger suggested that board members send their individual comments on the draft report to the

Administrator no later than March 15. He asked the Administrator to send all Board members an electronic copy of the narrative section of the report to facilitate review.

Update Board Committee Assignments

No action taken; this was discussed in the work session instead.

Reference Manual for Building Officials

Administrator Valentine explained that the Board of Architect Examiners has invited OSBGE to its April 6th meeting to discuss the inclusion of information in the manual specific to OSBGE. She further explained that the Oregon State Landscape Architect Board also received the same invitation and is sending at least one board member to the April meeting. Member Stroud asked for background about the manual as he was not involved in the prior Board discussions. Vice Chair Weick stated that he can probably attend the meeting on behalf of the Board and will work with the Administrator on scheduling.

Follow-up: AC 11 07 041 (Geology descriptions in Cleanup Reports for DEQ)

Administrator Valentine reminded the Board that discussion of this correspondence item was not completed. The Board discussed that it may need to revisit this issue when considering example reports provided in the December 2, 2011 meeting packet. This will remain on the Old Business list for now so that the Board does not forget about this. Vice Chair Weick did ask for his name to be removed as the assigned Board member as his employer has viewed this as a possible conflict of interest in relation to his work at DEQ.

Board Policies-Procedures

No further discussion; this was addressed briefly during the work session and as part of the Administrator's Report.

Action List

The Board quickly reviewed.

Next Newsletter (covered in Outreach Committee)

No further discussion; this was addressed briefly in the Administrators report and during earlier discussions.

Public Comment

Yinger

Chair Yinger noted that the one guest of the Board previously was provided an opportunity to address the Board and has already departed. No other guests have joined the Board.

Announcements

All

a. ASBOG Memorandum – Executive Committee Officers for 2012
Information was noted, but the Board did not see reason to discuss this.

b. ASBOG Spring Council of Examiners (COE)– April 13-14, 2012
The Board discussed whether to send a representative to the spring COE. Chair Yinger explained the COE process and how the Board has participated in the past. The Board did not send a member to the 2011 Spring COE. Member Stroud was identified as a possible representative. He will evaluate his schedule and work with the Administrator on registration if he is able to attend on behalf of the Board.

At 5:14 PM, Chair Yinger adjourned the Board meeting.

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Respectfully submitted,

Christine Valentine, Administrator

The minutes of the March 9, 2012 quarterly work session and meeting minutes were approved as is at the June 7, 2012 Board meeting.

Christine Valentine, Administrator