Oregon

STATE BOARD OF EXAMINERS
FOR ENGINEERING &
LAND SURVEYING

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LAW ENFORCEMENT COMMITTEE

Minutes of Meeting
December 12, 2014

Members present:
Bill Boyd, Chair
Jason Kent
Ron Singh
Dave Van Dyke (arrived at 10:00 a.m.)

Staff present:
Mari Lopez, Board Administrator
Jenn Gilbert, Executive Assistant
Adaira Floyd, Social and Communications Media Specialist
James R. (JR) Wilkinson, Investigator
Monika Peterson, Investigator

Others present:
Katharine Lozano, Assistant Attorney General
Sue Newstetter (Observer, arrived at 2:32 p.m.)

The meeting of the Law Enforcement Committee was called to order at 8:29 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 Disposition
Did Not Contest: Recommend Approval of Default Final Order
2883 – David A Edwards
During the October, 2014 Committee meeting, the Committee determined to issue an NOI to assess Edwards with a $500 civil penalty for violation of ORS 672.047, right of entry by land surveyor. Staff reported that Edwards did not contest. It was moved and seconded (Boyd/Kent) to recommend the Board to approve the default final order. There was no further discussion.

NOI Pending Response:
2795 – Shoji Hamaya
2802 – Chang Woo Lee

2840 – Sung Ho Kim
2862 – Itaru Sano

Informal Conferences
2868 – Shaun Martin
Chair Boyd announced that the Committee would go out of public meeting to deliberate on a contested case. **The Committee exited its public meeting pursuant to 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 noted that no decisions were made and no votes were taken.** Once back in public meeting, Investigator Wilkinson explained that the Committee issued Shaun Martin, EIT, a Notice of Intent to Assess Civil Penalty (NOI) that also proposes a letter of reprimand for making untruthful statements to the Board, for misrepresenting himself as a licensed engineer on multiple occasions, and making untruthful statements regarding his qualifications to the public. The committee reviewed the recorded informal conference from Martin's prior case, wherein the statements alleged to be untrue were made.

Mr. Singh asked if the Board proposed sanctioning Martin at the highest possible level. AAG Lozano affirmed it had, given that Martin passed the fundamentals examination. She noted that, beyond regulatory discipline, if the Board has evidence a person is continuing to violate the laws and rules at issue after a final order is issued, the Board may seek an injunction to stop the conduct – here, use of title violations. Persons who violate injunctions can face criminal penalties. In response to a question about the proposed civil penalty of $4,000, Investigator Wilkinson explained that the penalty was set at the maximum for the four violations currently alleged in the Notice. The proposed sanction also includes a reprimand.

Ron Singh raised a concern about violations of civil or military law, outside of the regulatory theater, that Martin may have committed. AAG Lozano added that the matter also could also proceed in a civil or military court, depending on which forum was appropriate under the circumstances, but noted that the military authorities brought the information for this second case against Martin to the OSBEELS, so they are aware of the matter if they wish to pursue it. Investigator Wilkinson noted that the ACOE responded to the Board's Freedom of Information Act (FOIA) request. During FOIA discussions, information revealed that Martin was working for the Oregon Military Department (OMD). A separate inquiry was made to the OMD regarding any disciplinary action. Both agencies responded that no disciplinary records were found during the period subject to the FOIA requests.

AAG Lozano noted that the Board also has the option of referring criminal violations under its statutes (for OSBEELS, the unlicensed practice of engineering) to the appropriate authorities (who may or may not elect to prosecute). She explained that if the committee wished to make a criminal referral in Martin's case, additional research would be needed to determine the appropriate forum for referral, as the referral would be under the Oregon Revised Statutes, but Martin was active duty military when he engaged in the conduct alleged.

AAG Lozano noted that refusal to issue registration is a disciplinary option for unlicensed engineering, violations of the rules of professional conduct, etc., under ORS 672.200. Ms. Lopez

surfaced the possible distinction between refusing registration and prohibiting an individual from sitting for the professional examination. Mr. Kent asked about Martin applying for registration in other states. AAG Lozano clarified that the Board would have no say in the matter, outside of any decision the Board might make on a comity application of an individual it had previously disciplined. Chair Boyd added that, if a final order is issued against Martin, the case would be reported to the Law Enforcement Exchange for the National Council of Examiners for Engineers and Surveyors (NCEES) and other states would have access to the information.

Chair Boyd also expressed concern that Martin went to considerable lengths to forge a seal for the Missouri reference letter he completed, subject of Martin's first case with the Board. Investigator Wilkinson agreed, and added that Martin led the Committee to believe that the reference letter was an isolated incident. Mr. Kent requested a recap of the current violations alleged. Investigator Wilkinson listed the following: misleading the Committee, a false résumé with an invalid Oregon PE registration number, use of PE title in email signature block, and use of PE title in FEYA application. Mr. Kent noted that Martin's former commander pointed to at least eight statements Martin made to the Committee that the former commander reported were false. Mr. Kent asked why the eight false statements were not separate violations. Investigator Wilkinson replied that the NOI is currently drafted in a way that presents all of the statements alleged to have misled the Committee as a single event. AAG Lozano responded to Kent by noting that the Committee can keep the Notice as drafted, or can amend the Notice to separate each false statement as an individual violation. Chair Boyd observed that Martin did not deny the factual statements in the Notice.

Mr. Singh inquired about amending the Notice. AAG Lozano replied that under the administrative rules for contested cases, notices can be amended at any point, up to the hearing. Mr. Kent reiterated how serious the matter is and asked about referring it for potential criminal proceedings. AAG Lozano repeated that the Committee would need to direct her to research the issue because of the three potential jurisdictions involved: Oregon, California, and the military. She noted that the case could be settled today, could be forwarded for a hearing, orcould be set for additional consideration at the next Committee meeting.

Attorney Meyer and Martin attended the informal conference in person. Martin began his informal conference with a statement that he did something that he regrets. He asked the Board to withdraw the NOI because the matter happened five years ago in California while in the military. He added that he has received military discipline, but has not provided copies of his military disciplinary records to the Board due to his concerns that they would become public records. He also stated that this issue has cost him his career and expenses.

In response to the résumé allegation, Martin admitted that representing himself as a PE was wrong; however, he asserted it had nothing to do with the State of Oregon and asserted it was not within the OSBEELS jurisdiction. Regarding the email traffic and signature block, Martin reported that it was done while living in California and working for the military. He noted that although he presented himself as a PE in his signature line, he claimed it was "internal communications." Martin claimed that it was Kaulfers who submitted the FEYA application. As a result, he denied completing the initial application and using the PE title. When Martin saw the application, he claimed, he corrected it to show his intern title instead of PE.

Chair Boyd asked where Martin is currently working. He stated that he is currently employed with the Oregon Military Department (OMD) as a manager and is no longer working in the engineering section. Martin further claimed that he is looking at forced retirement as a consequence of these matters.

Mr. Kent asked about the FEYA application and how Kaulfers came to believe that Martin was a PE. Martin replied that he corrected the application and the award was given as an intern. Was that the first time Kaulfers learned Martin was not a PE? Martin replied that it occurred around the same time he was facing action for the Missouri letter and forged seal. Chair Boyd asked if the application was in error, or if the error was corrected before it was submitted. Martin stated that Kaulfers asked him to review the application and it was corrected during review. Martin claimed that the application never went to NSPE listing him as a PE.

In an attempt to resolve the application question, Mr. Kent asked Investigator Wilkinson what was in the case file. Investigator Wilkinson stated that the email string that ended with Martin and the FEYA application began when LTC Torrey DiCiro, ACOE San Francisco District Commander and District Engineer, received a request for nominations from his superior officer. DiCiro replied to the announcement by naming Martin and by including Kaulfers as a recipient. Kaulfers then requested that Martin complete the application. The specific circumstances behind completion of the application were not explained.

As Martin claimed that Kaulfers completed the application, Investigator Wilkinson then asked on what information Kaulfers relied to complete Martin's application with a PE designation. Martin replied that he listed himself as a PE, but not with an Oregon registration. Mr. Singh observed that the FEYA application showed a PE, Oregon registration, and registration date. Martin stated that there was no date on the application so he was not sure where the information originated.

Another inquiry was made about his military position and whether the job opportunity was granted due to Martin representing himself as an Oregon PE. Martin affirmed he took an assignment that required a PE. One of the positions was for an engineer; however, the other position was for construction management, which Martin claimed was not an engineering position. Martin claimed that he was not in responsible charge of engineering projects, but was instead involved in construction management. He explained that, in the military, the position is called a project engineer. Mr. Singh was concerned about public safety and if the construction management role was assigned to him because ACOE was under the impression he had the professional credentials, based on the résumé and employment application containing PE misrepresentations. Martin expressed that he could not say. He claimed that although the assignment required a PE, there were no engineering assignments. He explained that civilian engineers produced the engineering works and that he did not engage in design work or reviews, but processed payments for example. The Committee inquired about his duties in the role. Martin stated that one of his projects was a city water line. He claimed that he managed the project and ensured that submittals for contract administration were completed.

Mr. Kent reminded Martin that he had asserted the Board lacked jurisdiction due to Martin's California residence and employment. Mr. Kent asked if California had issued him a registration. Martin replied that he did not think through the consequences of his actions.

Martin pointed out that OAR 820-020-0025(1)[1] refers to registrants and that OAR 820-020-0005(3)[2] defines registrant as an individual who holds a license in Oregon. He denied holding a license in Oregon. AAG Lozano noted that ORS 672.200(3) authorizes the Board to enforce the OAR 820, Division 20, Rules of Professional Conduct, on enrolled interns.

Martin then asked the Board to take into consideration that he took responsibility for his earlier actions and complied with the sanctions. He referred to the NOI and a notation that his prior discipline was reduced. In case #2750, the Board first proposed to revoke his certificate of enrollment, but reduced it to a 90-day suspension. He stated that he regretted his mistake and has taken measures to correct the matter. Martin expressed the option to release his military discipline; however, he is concerned with the discipline becoming public record.

AAG Lozano clarified for the Committee that Martin was proposing for them to either withdraw the NOI or reduce the civil penalty. Martin then asked the Board to issue the civil penalty to a "few hundred dollars." He added that he still has aspirations to sit for the professional examination. He would accept the letter of reprimand if it included language that would not prohibit him from taking it. Attorney Meyers reiterated these points.

Mr. Kent responded that Martin asserted cooperation with the Board; however, the case summary listed eight misrepresentations he made to the Committee during the prior informal conference. As a rebuttal, Martin stated that Kaulfers was not his supervisor, but his peer. He noted that Kaulfers worked in San Francisco, while Martin worked in outlying areas. Martin claimed that they did not work in the same buildings and his punishment was not administered by the ACOE, therefore Kaulfers would have no way of knowing details.

Mr. Kent interrupted in attempt to refocus the discussion on five statements in the NOI. Martin did not have any specific responses, other than to state that he used the PE in his e-mail signature block. Martin added that ACOE staff believed he was a PE based on an assumption. Mr. Kent informed Martin that Kaulfers brought to the Board's attention the eight false statements Martin made to the Committee.

AAG Lozano asked if DiCiro was Martin's superior officer. Martin clarified that DiCiro was his commander but explained that at the time of hiring, he was not the commander. AAG Lozano asked who issued discipline. Martin replied that it was the Oregon National Guard (ONG) in June 2014. Mr. Kent asked if Martin was disciplined at the time of the first informal conference. Martin explained that he believed he would receive punishment based on his discussion with his commanding officer. Investigator Wilkinson brought attention to a letter from the Oregon Military Department (OMD) stating that no discipline was issued in the 2010-2012 timeframe. It

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[1] *OAR 820-020-0025(1), Obligation of Registrants to Issue Statements only in an Objective and Truthful Manner; Registrants must be objective and truthful and include all relevant and pertinent information in professional reports, statements or testimony.*
[2] *OAR 820-020-0005(3), Preamble; in these Rules of Professional Conduct, the word "registrant" means any person holding a license or certificate issued by this Board.*

was unclear as to why, in July 2014, they would not have mentioned the June 22, 2014, discipline. Martin claimed to have a copy of the letter of reprimand, but reiterated his concern about documents becoming public record.

Chair Boyd asked Martin five questions, regarding the eight false claims Kaulfers asserted in response to the meeting minutes posted. Martin's first response was that he never saw his name and PE designation posted on a conference wall. Second, he believed at the time of the first informal conference he was about to receive Article 15 discipline, Uniform Code of Military Justice (UMCJ). Third, he agreed that he would have received Article 15 had the true story been told. In response to the fourth question, he would not have been assigned had the ACOE known he did not hold a PE registration. He added that non-registrants can hold similar positions, and he has, but the San Francisco office required a PE. Last, he used PE in his signature block in communications to outside agencies.

Chair Boyd also asked about his disciplinary records. Martin stated he wanted to cooperate and to submit his records, but he remains opposed to them becoming public record. AAG Lozano inquired what records existed. He responded that it was the proceedings of the ONG investigation indicating guilt. He claimed that from that investigation came forced retirement. The Committee inquired when the ONG investigation began. Martin thought it was 2013, but was not sure. He explained that he left the military for the ONG in July 2012. The prior informal conference was held in April 2012.

The Committee exited its public meeting pursuant to 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 noted that no decisions were made and no votes were taken. Chair Boyd observed that Martin referred to a military investigation and that he had documentation that he did not want to submit. Martin replied that he received a letter of reprimand and mandatory retirement. Mr. Kent noted contradictions on dates and times. He asked, when did the investigation occur and when did it culminate? Was the investigation by the ACOE or the OMD? Martin thought it began through the ONG as a commander's inquiry in November 2013 and suggested that sometime in April or May 2014 it went to the General who determined to have Martin resign with a letter of reprimand (he will no longer be on active status). Since his job is tied to the military, he is to also leave his civilian position. The Committee inquired if there was an investigation by the ACOE. Staff reported knowing that a preliminary investigation was conducted by DiCiro and that ONG was contacted, which apparently led to the November 2013 ONG investigation. Martin stated that when he informed DiCiro in 2012 that he was facing discipline for the Missouri letter, things began to unravel. He added that the events occurred near the end of his ACOE tour, which is why it fell to ONG to investigate.

AAG Lozano informed Martin that the Committee would like to follow-up on statements they heard. As a result, the Committee was not ready to settle. She added that the delay also would be Martin's opportunity to seek a protective order, under which he can submit his disciplinary records to the Board. Martin confirmed that a protective order would allow the Committee to review the records while also protecting his privacy. After further discussion, Martin and the

Committee agreed to reschedule an informal conference for February 12, 2015. Martin will be required to submit his information to Investigator Wilkinson by January 29, 2015. If any delays are anticipated in seeking the protective order, Martin was advised to communicate with Investigator Wilkinson.

The Committee then directed Wilkinson to follow up on statements made my Martin during the informal conference. There was no further discussion.

2863 – David C. Popescu

On November 4, 2013 the Board received a complaint from Erric D.Jones, PE/PLS. The complaint alleged that David C. Popescu, PE was engaged in the practice of land surveying and is not registered as a professional land surveyor with the Board. Jones alleged that Popescu created a survey where he set wood hubs at the two front property corners and marked these as property corners at the site, as well as on the map. Jones included a copy of a foundation survey completed on July 12, 2013, by Popescu, which indicated that he "SET HUB AT PROP CORNER" at two locations on the survey. Popescu indicated in his response to the Board that he did not complete a boundary survey and that he set two hubs to show the approximate location of the front property corners for the purpose of construction. Staff reported that a letter was sent to Popescu on March 28, 2014, requesting additional information regarding the map. The letter also notified him that his seal was not in compliance with OAR 820-010-0620 and to submit verification of a corrected seal within 30 days. Popescu was again notified that his seal was not in compliance with OAR 820-010-0620 on June 26, 2014. Staff noted that Popescu was given another thirty days to respond with a compliant seal. Popescu responded on July 2, 2014, however his seal remained non-compliant. Popescu submitted a compliant seal on August 11, 2014. The Committee met on August 14, 2014 and determined to issue an NOI for $1,000 and a 30-day registration suspension for the unlicensed practice of land surveying. Christopher P. Koback of Hathaway Koback Connors LLP requested an informal conference preserving the right to a Hearing on behalf of Popescu.

Koback and Popescu attended the informal conference on December 12, 2014 in-person. Koback and Popescu provided a copy of the original survey and staff distributed copies to each Committee member. The Committee members had the opportunity to ask Popescu questions to determine if the work he did crossed the line into the practice of land surveying. Mr. Singh asked questions regarding how the lines were determined, what the drawing was based on, how the calculations were made, and how the work was completed. Mr. Singh explained that as there were some existing monuments and some unfound monuments – it would take special land surveying training to determine the next course of action (which he explained could be to record the record values or go another route to determine how to address the deficiencies in width). **The Committee exited its public meeting pursuant to 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 noted that no decisions were made and no votes were taken.** It was moved and seconded (Boyd/Kent) to withdraw the notice of intent and issue a letter of concern to Popescu explaining that only a registered PLS can establish property lines, per ORS 672.025(3). The motion passed unanimously and Popescu accepted.

Additionally, it was moved and seconded (Boyd/Singh) to recommend the Rules & Regulations Committee to clarify ORS 672.005(1)(d)(e) and 672.060(10) as it relates to establishment of boundary lines for non-surveyors. The motion passed unanimously. In conjunction with the proposed rule, it was moved and seconded (Boyd/Singh) to recommend the External Relations Committee staff to draft an article for the OSBEELS Newsletter, *The Oregon Examiner*, defining what an engineer is authorized to do in respect to establishing property lines for foundation surveys. The motion passed unanimously. There was no further discussion.

Cases Subject to OAR 820-010-0617

2827 – Ronald McKinnis / Stephen Haddock

Before discussion started on the case, Chair Boyd asked Mr. Singh to give some background on the Bureau of Land Management (BLM) 1973 *Manual of Surveying Instructions* (*Manual*). At the time of the initial McKinnis survey, Mr. Singh believed the 1973 *Manual* applied. He also noted that the 2009 *Manual* replaced the 1973 *Manual*. Both apply to the Public Land Survey System (PLSS).

Mr. Singh noted that the *Manuals* are not instructions on how to conduct a private land survey; rather, the *Manuals* set the standards for the PLSS and how to restore original survey monuments and boundaries. Mr. Singh explained that there has been a series of *Manuals* since the 1860's along with published circulars. Together, they were instructions to government surveyors on conducting PLSS surveys. He expressed that private surveyors need to know the BLM *Manual* because it explains how original corners and boundaries were established. Mr. Singh further explained that the circulars are particularly important for private surveyors to use because they, for example, deal with restoration of lost and obliterated corners rather than establishing new corners. He continued that circulars correspond to specific editions of the *Manual*.

Mr. Singh further explained that new circulars include information from prior circulars.

Chair Boyd asked about conflicts between current and past circulars. Mr. Singh could not immediately recall any, but explained that Eastern Oregon has a number of original surveys that have not been retraced. Investigator Wilkinson added that several of the lands surveying cases on the agenda highlight differences of opinions on how the 1973 *Manual* and the 2009 *Manual* treat restoration of lost corners. An additional challenge is that one of the surveys straddles both the 1973 and 2009 *Manual* giving rise to further differences of opinions on the directives.

Regarding the specifics of the McKinnis complaint, Investigator Wilkinson explained that two surveys are detailed. First is the Patterson survey, which involves interior section lines that are dependent on the position of the exterior section corners. The exterior section boundaries were originally established by surveyors contracted by the General Land Office (GLO, precursor to the BLM). Investigator Wilkinson further explained that the second survey was done for the Morrow County OHV Park. As a result of a right of entry contact with Patterson and that survey, McKinnis was able to use his experience and apply it to the OHV Park survey. Investigator Wilkinson reported that McKinnis did this to better understand how the original GLO surveyor completed this township and subdivided the sections. While the two surveys share this common feature, they are unique and each presents its own issues.

Chair Boyd asked if McKinnis reestablished original corners for the Patterson survey. Investigator Wilkinson replied that he had. Kinzua Timber Company previously owned the Patterson property. He further explained Kinzua surveyors, who were unregistered, subdivided the sections. In some instances, McKinnis used Kinzua survey information to reestablish original PLSS corners. He added there were no Kinzua records.

On the Morrow County OHV Park survey, Chair Boyd asked if McKinnis reestablished original corners. Investigator Wilkinson replied that he had. He explained the issues in that survey are primarily related to the original surveys along the Range line, which also forms a portion of the boundary between Morrow and Grant counties. The Range line is also where the McKinnis and the Delano surveys overlap. He added that there are distinctions between the two survey cases because they were done at different times, but they overlap because of the common corners along the Range line. AAG Lozano asked if there were potential multiple filing violations because of multi-county boundaries. Investigator Wilkinson confirmed that there would be requirements for filings in all affected counties where survey monuments and boundaries include land in more than one county.

Chair Boyd noted two other discussion points, including Boardman Rural Fire Protection District Plat 2012-07 and Heppner Partition Plat 2012-08. Investigator Wilkinson replied there are issues with dates of filing for both surveys; however, the question being asked was the role of the County Surveyor. Investigator Wilkinson highlighted the Patterson survey. He explained that the survey was dated January 2007, but filed April 2014; however, he continued that the discussion point regarding ORS 209.250(4)[3] was not as straightforward. Subparagraph 4(a) requires the County Surveyor to review the map for compliance within 30 days and to either index the survey or return it to the surveyor for corrections. In turn, subparagraph 4(b) requires the surveyor to return a corrected survey to the County Surveyor within 30 days. On this issue, the challenge is a lack of records to document the exchange of maps of surveys.

Investigator Wilkinson explained the issue related to ORS 209.250(4) in this case is that there were differences of opinion regarding the *Manual* because the private surveyor disagreed with the County Surveyor's interpretation of it. As a result, the County Surveyor would not file the survey until it was changed to comply with the County Surveyor's interpretation of the manual, and the private surveyor refused to change his survey. Mr. Singh observed that county surveyors must follow the requirements of ORS 209.250. AAG Lozano reviewed ORS 209.250(1), (2), and (3) and noted that a County Surveyor can return a map under ORS 209.200(3) for not complying with the *Manual*. She also asked if this was one ongoing survey, or was it an unfiled survey that later was completed under a second survey. Mr. Singh replied that once a survey is accepted by the County Surveyor and numbered, it is filed. In this case, there were years between the surveys. The question was whether this was one enduring survey, or two surveys -- a survey begun many years ago that was not filed, and a second survey that finished the incomplete survey?

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[3] *ORS 209.250(4)(a), Within 30 days of receiving a permanent map under this section, the county surveyor shall review the map to determine if it complies with subsections (1), (2) and (3) of this section and applicable local ordinances. A map must be indexed by the county surveyor within 30 days following a determination that the map is in compliance with this section. A survey prepared by the county surveyor in an official or private capacity must comply with subsections (1), (2) and (3) of this section.*
(b) A survey map found not to be in compliance with subsection (1), (2) or (3) of this section must be returned within 30 days of receipt for correction to the surveyor who prepared the map. The surveyor shall return the corrected survey map to the county surveyor within 30 days of receipt of the survey map from the county surveyor.

In response, Mr. Singh explained that if a surveyor was hired and doesn't put anything in the ground over an eight year period it should be an issue between the surveyor and the client. Chair Boyd added that if a monument is found and there is no record, then there is no way to determine its origin. Mr. Singh agreed, noting that the 45-day clock starts when the surveyor established the first monument. He continued that if eight years pass and more groundwork is completed, but it's a continuation of the same survey to fulfill the original purpose, it was his opinion that it was the same survey. He also observed that documents showed that survey maps were submitted to the County Surveyor with ensuing discussions. If it was just a discussion, then the requirement to submit a map for filing was not fulfilled. AAG Lozano wanted to know when one survey ends and another begins. Mr. Singh stated that surveys are done from someone for some purpose - if a surveyor has not set corners, it would seem to be one continuous survey. Chair Boyd remarked that if a monument is set, the surveyor should file a map.

AAG Lozano drew a scenario where a surveyor puts monuments in the ground, does not finish the survey or file a map, but others rely on those monuments to build fences – is it still an open survey in progress even though others have relied on the monuments that were set? Mr. Singh thought so because that person is not considering new evidence of where the boundary should be located. Mr. Singh also expressed that if monuments are placed in the ground before the whole boundary is resolved, then problems can arise. He explained that when a new parcel is established, evidence is gathered to determine the boundary – the act of setting monuments being the finishing touch. Chair Boyd asked if boundary resolution was done to check closure. Mr. Singh state that was not necessarily the case because establishing a single corner might be done first if that position controlled the survey. Mr. Singh further explained that a parcel survey might be completed after setting a controlling quarter-corner position, for example. Mr. Singh stated the concepts in the *Manual* behind restoration of original corners have not changed.
Chair Boyd noticed that McKinnis took the survey to two Morrow County Surveyors who both informed him that he needed to follow the *Manual*. Investigator Wilkinson replied that part of the problem is that there are Government Lots along the Range Line in the Patterson and the Morrow County OHV Park surveys. In addition, there are Government Lots along the Township Line in the Morrow County OHV Park survey established by the GLO. However, McKinnis surveyed the Patterson section into its aliquot parts[4] and did not restore the original Government Lots.

Chair Boyd cited ORS 209.250(4), stating that a survey map found not in compliance with the statue must be returned to the surveyor within 30 days. He also noted that the statute requires the surveyor to return the map to the County Surveyor within 30 days. Investigator Wilkinson admitted there is debate over undocumented exchanges of draft maps. Chair Boyd countered that going in and talking with the County Surveyor is not the same as submitting the map for filing. Mr. Singh stated that most counties require a seal and stamp. Investigator Wilkinson replied there are few documents that track the 30-day return cycle. Fundamentally, the argument is over

[4] *ALIQUOT – Contained an exact number of times in another; a part of a measurement that divides the measurement without a remainder. See ALIQUOT PARTS. ALIQUOT PARTS – Legal subdivisions, except fractional lots, or further subdivision of any smaller legal subdivision, except fractional lots by division into halves or fourths ad infinitum. See LEGAL SUBDIVISION; SUBDIVISION, SMALLEST LEGAL and MINOR SUBDIVISION. (Glossaries of BLM Surveying and Mapping Terms, Searchable PDF 2003)*

methodology inherent in the *Manual* and the authority of the County Surveyor. Lozano clarified that there may be a 45-day violation, but perhaps not a 30-day violation when a monument is set but a map was never submitted.

Another question was raised by Mr. Singh about the Board's role. If a County Surveyor disagrees with how a private surveyor established a monument, is it the Board's role to clarify? AAG Lozano replied that the Board has discretion. If the Board found that a private surveyor or a county surveyor was engaged in negligent or incompetent practices, either in what was filed or the requests that were made, the Board could open an investigation into the surveyor. If any surveyor disagreed with a survey, the Board could get involved. A second question was asked regarding the Board defining the proper procedure. Chair Boyd pointed to ORS 209.250(4)(c)[5] , which requires county surveyors to forward non-compliant maps to the OSBEELS; AAG Lozano emphasized that the Board should have been receiving these maps all along.

Chair Boyd also noted that an action cannot be maintained against a county surveyor. AAG Lozano clarified that the prohibition against an action against a county surveyor is for filing of maps, but not for refusing to file compliant maps and not for incompetence or negligence. Chair Boyd added that the maps in question were not forwarded to the Board at the time, and there was a chance they were never filed. As most counties retain filing records, Mr. Singh asked if there were Morrow County records. Investigator Wilkinson explained that there are limited county records in Morrow County, mainly emails and admissions to evidence 30-day violations, but suggested there are clear violations for failure to file within 45 days of setting monuments.

Regarding the Boardman Fire District Partition Plat 2012-07, Investigator Wilkinson explained that a number of parcels were being combined in order to plat a rural fire station. One of the properties was vacated right-of-way in addition to Oregon Department of Transportation (ODOT) lands held in fee simple. Former Morrow County Surveyor Coppock questioned whether ODOT had the authority to dispose of vacated property. Staff reported that a debate ensued and McKinnis eventually contacted ODOT and received documentation. McKinnis raised the question about the role of a county surveyor. Mr. Singh asked whether McKinnis was correct and Coppock had no reason to not file the survey. Investigator Wilkinson was not sure, but Coppock requested the matter be clarified on the survey map. McKinnis raised the question whether the County Surveyor had this authority.

The broader question was the role of the County Surveyor in not filing a map due to a difference of opinion regarding the status of a deed. AAG Lozano reviewed ORS 209.250(2).[6] It requires that the surveyor "*must state <u>which</u> deed records, deed elements, survey records, found survey monuments, plat records, road records or other pertinent data were controlling when*

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[5] *ORS 209.250(4)(c), A map that is not corrected within the specified time period must be forwarded to the State Board of Examiners for Engineering and Land Surveying for action, as provided in subsection (11) of this section.*

[6] *ORS 209.250(2); The permanent map must have a written narrative that may be on the face of the map. If the narrative is a separate document, the map and narrative must be referenced to each other. The map and narrative must be made on a suitable drafting material in the size required by the county surveyor. The lettering on the map and narrative must be of sufficient size and clarity to be reproduced clearly. The narrative must explain the purpose of the survey and how the boundary lines or other lines were established or reestablished and must state which deed records, deed elements, survey records, found survey monuments, plat records, road records or other pertinent data were controlling when establishing or reestablishing the lines. If the narrative is a separate document, the narrative must also contain the following….(see https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors209.html)*

establishing or reestablishing the lines." Mr. Singh observed that McKinnis mentioned the deed in his survey, but the County Surveyor questioned if it was correct. AAG Lozano noted that the requirement under the statute is only that the deed used be identified in the narrative. The Committee concluded that, on this basis, there appears no reason to refuse to file the survey just because the County Surveyor questioned whether the deed referenced was the correct deed; if there was nothing in the narrative about the deed, then there would appear to be cause to refuse to file the survey.

Mr. Singh added that McKinnis appears in compliance as long as he noted the deed he used was listed on the survey. AAG Lozano further opined that it was likely not the Legislature's intent to have OSBEELS defining boundaries in the field – substituting itself for private surveyors on individual projects; what the statute requires is for the surveyor to establish a clear record of the deeds used to determine the boundary. Continuing, she explained that then, under the statute's requirements, if there is a subsequent private civil action to resolve a boundary, then the information to determine how boundaries were established will be preserved on the survey itself.

In regards to the Port of Morrow Partition Plat 2012-08, Investigator Wilkinson stated that it is another issue involving differences of opinions regarding deeds. He assumed that the same concepts would apply to this survey. AAG Lozano agreed, adding that these cases are different ways to look at the same core statutory issues.
Returning to the Patterson and Morrow County OHV Park surveys, the Committee discussed that McKinnis admitted to not following the *Manual*, "and sometimes that happens." McKinnis asserted that his surveys met the requirements of ORS Chapter 92. Investigator Wilkinson reviewed the potential violations admitting that this was a first draft to get a sense of the direction the Committee. AAG Lozano suggested further investigation, which might result in bifurcation of the case to separate the clear violations, such as 45 days, from those that are more complex, such as the questions regarding the *Manual*.

Chair Boyd asked that the surveyors be notified that there may be other issues and that the cases are still under investigation. Mr. Singh, Chair Boyd, and AAG Lozano expressed interest in reviewing a revised case summary before the next Committee meeting.

<u>2836 – Adapt Engineering / Daniel H. Watkins</u>
On March 13, 2013 the Board received a complaint from Daniel Harris Watkins, PE, claiming that Adapt Engineering (www.adaptengr.com) was producing geotechnical reports and performing civil engineering through its Oregon office without having a registered manager, officer, partner, or employee to practice in the discipline of civil and geotechnical engineering, in violation of OAR 820-010-0720(1). Staff reported that Thomas D. Van Liew, PE is no longer employed by Adapt Engineering and as a result, the firm's Portland office may be in violation of ORS 672 for offering engineering services without employing a PE. Adapt does not have a currently valid CCB license and therefore does not qualify for an exemption under ORS 672.060. The firm has extended an offer to Jeanne Niemer, an Oregon registered geotechnical engineer, to become a full time employee of the Oregon office by January 1, 2015. <u>It was moved and seconded (Boyd/Hoffine) to discuss the case during the next Committee meeting. The Committee determined further investigation is needed, specifically to verify key dates and if any engineering practice took place after Liew's employment.</u> There was no further discussion.

2841 – Joseph A. Sturtevant / John Duval

On February 19, 2014, the Board received a complaint form from John Duval, stating that Joseph A. Sturtevant was offering engineering services through his firm's website www.surface-tech.com. As evidence, he submitted screen shots of the website, dated February 17, 2014, with his complaint. Duval checked the OSBEELS website and found Sturtevant's license status to be delinquent. Staff reported that Sturtevant's registration was in delinquent status from July 20, 2010, until June 2, 2014. When presented with information relating to his delinquent status, Sturtevant took immediate action to both remove references to engineering on his website and reinstate his license. While his license was in delinquent status, staff reported that Sturtevant was employed in sales positions from 2009 to July 2013 and became President of Surface Tech in August 2013 where he experimented with asphalt fiber treatments, performed extensive research and development, and worked with testing labs relating to asphalt fibers. It was moved and seconded (Boyd/Singh) to direct staff to conduct further investigation, specifically relating to the activities of the firm during key time frames. There was no further discussion.

2858 – Kenneth Delano / OSBEELS

This case is related to case #2827. Due to time constraints, the Committee determined to forward the case to a future Committee meeting.

2869 – Douglas Ferguson / OSBEELS

During a prior review of law enforcement case #2827 involving Ronald McKinnis, PLS, the Committee determined to open an investigation into Douglas M. Ferguson, PLS, PE, Ferguson Surveying, & Engineering. The concern was that six surveys were found not filed in Morrow County within 45 days of setting monuments violating ORS 209.250. Investigator Peterson sent Ferguson a letter on October 21, 2013, requesting a response regarding the surveys. Ferguson responded on October 30, 2013. Ferguson stated three of the six surveys had been completed by his staff surveyor Kenneth Delano, PLS, which is the subject of case #2858. Ferguson stated he was responsible for Morrow County surveys #1597 and #1681. When the Law Enforcement Committee (Committee) reviewed a preliminary evaluation on February 13, 2014, they directed that a new case be opened against Ferguson regarding the two unfiled maps. Ferguson claimed that both surveys were delivered to the Morrow County Surveyor in a timely manner, but discovered years later that neither had actually been filed. Ferguson was unable to produce any documentation to verify these statements. Although Ferguson did not provide any supporting documentation relevant to the surveys, he admitted in prior correspondence that Morrow County surveys #1597 and #1681 were filed more than ten years after the field work was completed. However, staff reported that Ferguson asserted his common practice of timely filing. He and other surveyors expressed concerns about the poor record keeping practices of former Morrow County Surveyors, which made it difficult or impossible for them to prove that they had timely filed surveys.

Investigator Wilkinson informed the Committee that this case regards failure to timely file maps of survey. He pointed out that Ferguson raised concerns about filing surveys in Morrow County, because records of the filed surveys were not kept, which also was confirmed by County Surveyors and private surveyors. However, Investigator Wilkinson explained that Ferguson corrected an earlier seal design flaw, but then used renewal dates on his seals that did not match

map dates or were improper. For example, map #1597 was filed February 17, 2011, but his renewal date showed "12/31/01." On #1681 he used a renewal date of "01/01/2014," which was filed August 23, 2013. However, registrant expiration / renewal dates are either June 30th or December 31th of each year and are not July 1st or January 1st. As a result, staff suggested it is improper to use a renewal date that does not match the map or is a date other than the registrant's biannual renewal date issued by the Board.

AAG Lozano asked if these were cases of surveys that were not filed by the private surveyor, or cases about a county surveyor losing or failing to properly maintain records of surveys that were, in fact, filed. Investigator Wilkinson admitted that the Committee may never know the specifics, given the concerns about filing practices of the county surveyor in the county at issue, at the time period in question. He added that Ferguson stated they were delivered for filing, but they were not filed. No documentation was provided to the Committee. AAG Lozano recalled other surveyors from related cases who had complained about poor record keeping on the part of the Morrow County surveyor's office. She noted that poor documentation was not mitigation, but a defense to the allegations because of a lack of evidence.

The discussion returned to the flawed seals and renewal date question. Mr. Singh observed that the initial concern with the seal was resolved; however, if the renewal date is incorrect then the appropriate response from the Board would be a letter of concern. Mr. Kent agreed that the corrected renewal date may not warrant disciplinary action. His concern was with the filing violation. Ms. Lopez stated that Ferguson submitted the maps for filing once notified and accepted responsibility for the mistake. The Committee recommended closing the case as compliance met for the seal issues and as insufficient evidence for the late filing allegations. It was moved and seconded (Kent/Boyd) recommended closing the case as compliance met for the seal issues and as insufficient evidence for the late filing allegations. The motion passed unanimously. There was no further discussion.

2877 – Judson Coppock / OSBEELS

This case is related to case #2827. Due to time constraints, the Committee determined to forward the case to a future Committee meeting.

2879 – Andrea Laliberte / OSBEELS

While staff was researching topics and presenters for the OSBEELS 2014 Symposium, potential presenter Andrea Laliberte was considered and the website for her firm, Earthmetrics, was reviewed. Since Laliberte was not a registered photogrammetrist, but appeared to be offering photogrammetric services via her website, a law enforcement case was opened. Anne Hillyer, RPP, was contacted by OSBEELS staff and was asked to assist in this case. On May 1, 2014, Hillyer affirmed to OSBEELS staff that Laliberte appeared to be engaging in the practice of photogrammetry based on a content review of her firm's website. As a result, a Respond to Allegations letter with a company questionnaire was sent on May 21, 2014.

Laliberte responded on May 23, 2014, stating that she accepted a full time position with another company in April, and that her firm Earthmetrics was no longer offering services. She declined to fill out the company questionnaire. In her response, she affirmed that she used the term "*photogrammetry*" in her stated qualifications, but claimed not to have performed

photogrammetric services for the public, and that she was in the process of taking down the firm's website. The Committee viewed the live website, www.earthmetrics.com and noted that it is still up and running, with any direct photogrammetry references removed. Investigator Wilkinson asked the Committee if the services she now described would meet the definition requiring professional registration. In addition, staff reported that Laliberte filed documentation with the Oregon Business Registry indicating that her business activity is "geospatial consulting." Mr. Kent asked about the evidence. Investigator Wilkinson replied the question now is whether she was still offering photogrammetric services by use of different terms. Ms. Lopez observed that Laliberte was claiming to be a remote sensing scientist. In addition, Laliberte also added a GIS workshop component. Mr. Van Dyke was unsure whether the web site continued the offering of services requiring professional registration. Mr. Kent suggested that someone with that skill level will not change what he/she is doing.

Staff reported that there is no record of Laliberte attempting to obtain licensure as an RPP in Oregon, nor does she appear to be licensed in any other state, per the NCEES database. Based on the prior assessment of an Oregon registered photogrammetrist (Hillyer), Laliberte was in violation of ORS 672.028 for offering photogrammetric services without proper registration to do so. Staff recommended the Committee discuss whether Laliberte's website, in its current form, is a continuing violation.

Mr. Singh reviewed the statutory definition of photogrammetric mapping in ORS 672.002(7). He added an example, and explained that using surveying tools and technology to measure does not necessarily mean an act is surveying. If her activities are the inventory of natural resources, gathering data regarding vegetative health, or determining if a slope's aspect and soil type meets a winery's need, it may not require professional registration. Investigator Wilkinson pointed out that an exception allows for maps and data to be compiled for natural and cultural resources. It was moved and seconded (Van Dyke/Singh) to request expert professional review for Laliberte's current website, www.earthmetrics.com. The motion passed unanimously. There was no further discussion.

2890 – Dave Young / OSBEELS

As a result of the Law Enforcement Committee review of case #2787, the Committee determined that sufficient information was provided to proceed with an investigation regarding Dave Young's role in the design of a culvert. A law enforcement case was opened as a result of statements made by both David Lysne and Young that indicated Young was responsible for the design of the Berry Creek culvert. However, documentation obtained from both the Oregon Department of Forestry (ODF) and Oregon State University (OSU), and statements made by Young, did not indicate he had a significant role in the design. Staff reported that Young appeared to have more involvement in the construction of the culvert as he indicated he staked the location so the contractor could bid for the job and then was present during construction. During the October Committee meeting, the Committee reviewed the file and determined to direct staff to investigate further into Young's role in staking the culvert. Staff was directed to find out who staked the line and the grade of the culvert and obtain the surveyor's staking notes. Upon further investigation, staff reported that Young was contacted on November 14, 2014 to clarify whether he participated in staking the line and grade for the culvert –Young did not respond. Other attempts and correspondences occurred to gain the requested information from

the contractor, Mid Pacific Enterprises, ODF, Steve Pilkerton and Marvin Pyles of OSU, and Lynse were not successful in identifying the individual who surveyed the site or the existence of staking notes. However, Lysne and Pyles both reported that to their knowledge, only Pyles's engineering student surveyed the site. A request for project records from Pilkerton did not elicit a response. Through general consensus, the Committee directed staff to further investigate. The Committee recommended staff to elevate the matter with OSU by contacting Upper level management and request project records to determine Young's part. The Committee offered other suggestions for investigation, and asked staff to investigate any records that show a copy of the contract or payments made to Young. There was no further discussion.

2894 – Theodore C. Baker / Ken Wachal

The Board received a complaint on May 28, 2014, from Ken Wachal, which alleged that Theodore C. Baker of Robert's Surveying failed to provide the required notice for right of entry and caused damage to fencing on the North property line. Baker stated that he did not enter Wachal's property on this date. Staff reported that Baker stated he uncovered a property corner that was in the public right-of-way on Oupor Drive and it was Baker's belief that he was not required to give notice. Baker stated he gave right of entry notice to Wachal the following week so he could return in a couple weeks to complete the survey work. There is no evidence that the damage to Wachal's fence was caused by Baker. Information and documentation from the Linn County Surveyor's office confirms the monument is in the public right-of-way (easement) however the land owners still own the area as described in their deeds. Through general consensus, the Committee deferred action and directed AAG Lozano to research whether the surveyor is required to follow the right of entry statute rules listed in OAR672.047 when entering private property that may be part of a public right-of-way. Pending the research and final decisions, the Committee recommended the External Relations Committee Staff to draft a newsletter article regarding the right of entry requirements as it pertains to private property that is also part of a public right-of-way. There was no further discussion.

2896 – Stephen T. Waring / OSBEELS

Staff reported that Stephen T. Waring, PE contacted the Board office on June 26, 2014, in order to resolve the status of his professional engineering registration when he discovered it was delinquent. As a result of Waring's disclosure to the Board, and along with his ownership of *Emagineered Solutions*, and his use of the P.E. title, a law enforcement case was opened on July 17, 2014. Waring failed to report an address change and his registration was in delinquent status for two years. Staff reported that Waring is the only professional registered engineer for his company; *Emagineered Solutions* and he used the "P.E." after his name on the website as well as his business cards. Waring is now actively registered; but was in violation of ORS 672.020 and 672.045 for the two years his registration was in delinquent status. Staff reported that Waring's website refers to the company as an engineering firm. Waring described the nature of the company's services to be the manufacturing of pipe lining equipment and the manufacturing and installation of a gravity dam monolith joint leakage waterstop. The Committee reviewed the file on October 22, 2014 and directed staff to get copies of design documents for the projects completed in Oregon during the time Waring's engineering registration was in delinquent status. H. Jayson Mugar, CFO of Emagineered Solutions contacted staff to explain that the company had only worked on one project in Oregon during the requested time period. Mugar explained that they do not produce designs; they install a product and the only calculations they make are

to determine the depth of the hole (being plugged or repaired) and divide it by 4ft which is the size of the cylinders they use to fix dam leaks. Mugar stated the company only fixed one leak in Oregon during the requested time period, which was the John Day Dam in April 2014. It was moved and seconded (Boyd/Van Dyke) to issue Mr. Warning an NOI to assess a $350 civil penalty for the violations of OAR 820-010-0605, ORS 672.020(1) and ORS 672.045(2). There was no further discussion.

> **Staff update:** A vote was not taken during the LEC meeting to proceed with opening a case against Emagineered Solutions separately as a company; as a result, the Board will be required to make a decision during the next Board Meeting in January.

2897 – Robert W. Stimson / OSBEELS

On June 18, 2012, the Board received a signed renewal form from Robert Wayne Stimson certifying that he completed the required Professional Development Hour (PDH) units. Stimson, 17703PE (delinquent), is a non-resident Oregon registrant and was selected to participate in an audit of his PDH units for the registration period of July 1, 2010 through June 30, 2012. Stimson failed to provide sufficient supporting documentation to prove all but eight of his claimed PDH units. It was moved and seconded (Kent/Boyd) to issue an NOI to assess a $1,000 civil penalty and 30-day suspension of Stimson's professional registration. The motion passed unanimously.

Unfinished Business

Request for Qualifications

The Committee reviewed a draft revision of the request for qualifications for professional reviewers created by AAG Lozano and Ms. Lopez, originally issued in August 2006. Administrator Lopez provided a brief summary of the document. It was moved and seconded (Boyd/Singh) to recommend Board approval for the request for qualifications and attachments. There was no further discussion.

Contested Case Updates

2697 – Dale La Forest

OAH hearing scheduled for 4/17/2015.

2826 – Commstructure Consulting

Further investigation in progress.

2846 – Nick M. Kerber

OAH hearing scheduled for 1/21/2015.

Case Status Reports

The Committee offered no comments on total cases open (53), cases subject to collections (14), or on cases subject to monitoring (16).

The meeting adjourned at 5:14 p.m.