



# Oregon

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STATE BOARD OF EXAMINERS  
FOR ENGINEERING &  
LAND SURVEYING

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Minutes of Meeting  
July 14, 2015

## CALL TO ORDER

President Kent called the meeting to order at 9:00 a.m. in the Conference Room of the Board office. **Please note:** The Consent Agendas referenced throughout these minutes are provided as attachments to this document.

## ROLL CALL

### Members present:

Jason Kent  
Chris Aldridge  
William Boyd  
Shelly Duquette  
Ken Hoffine  
Ron Singh  
Dave Van Dyke  
Amin Wahab  
Oscar Zuniga (Excused absence)

### Others Present:

Mari Lopez, Administrator  
Jenn Gilbert, Executive Assistant  
James R. (JR) Wilkinson, Investigator  
Katharine Lozano, Assistant Attorney General  
Michael Hardy, PE, Professional Engineers of Oregon (PEO)

## PUBLIC INPUT

There was no public input.

## BOARD CONSENT AGENDA

Mr. Hoffine requested to pull Item 3; Approval of the P.E.O. Breakfast meeting minutes. It was moved and seconded (Kent/Duquette) to approve the Board Consent Agenda (Attachment A) as amended. The motion passed unanimously.

Mr. Hoffine noted he was in attendance for the P.E.O. Breakfast meeting. It was moved and seconded (Kent/Aldridge) to approve the minutes as amended. The motion passed unanimously.

## **ADMINISTRATOR'S REPORT**

### Oregon Specific/National Council of Examiners for Engineering and Surveying (NCEES) Examinations

Ms. Lopez affirmed that the PE, SE, PLS and the WRE examination results were sent. Staff is currently getting ready for the October 2015 examination administration. However, due to the September 3, 2015 NCEES Exam Registration deadline, EQC must meet twice in the month of August. The members concurred with the staff proposal to meet on August 7, 2015 from 10:00 a.m. to Noon by telephone. A Special Board meeting can then be held on August 14, 2015 at 12:30 p.m. This will allow timely notification to exam candidates.

**Staff Update:** The August 7, 2015 meeting of the EQC was cancelled as a result of potential process changes from SB 297.

### 2015 Southern/Western Zone Meeting

Ms. Lopez briefly mentioned that she attended the Southern/Western Zone meeting in Scottsdale, AZ with Board member Amin Wahab and staff member Brianna Weekly. Along with the upcoming NCEES Reports with Motions and miscellaneous issues that were discussed, two administrative highlights of the Member Board Administrator forum were the possible adoption of common CPC (CPD) standards among the NCEES member boards and investigation by NCEES to possibly house all state-specific surveying examinations. If this were to occur, the state-specific surveying examinations could then be downloaded and proctored by individual jurisdictions.

### NCEES Annual Meeting

Ms. Lopez reported that she will be attending the 2015 NCEES Meeting in Williamsburg, VA. Jason Kent, Shelly Duquette, Ken Hoffine, Dave Van Dyke, Amin Wahab, and staff member Brianna Weekly will also represent OSBEELS. For consideration, a resume for Gary Thompson, PLS who is seeking a second term as the NCEES Treasurer and information about Shelley Macy, PE with the Wyoming Board was included in the Board packets. Ms. Macy is also vying for the position of NCEES Treasurer. The election will be conducted during the second business session at this year's Annual Meeting.

### Joint Compliance Committee (JCC) / OSBEELS and the Oregon State Board of Geologist Examiners (OSBGE)

During the May 7, 2015 JCC meeting, the Committee completed its final review of the MOU. The JCC members view the MOU as a key document for guiding how the committee functions. Ms. Lopez included the final draft of a new JCC MOU. The OSBGE Board voted to accept the proposed JCC MOU as presented. Aside from revising the OSBEELS Board President to Mr. Kent, it was moved and seconded (Kent/Singh) to adopt the JCC MOU. The motion passed unanimously.

### OSBEELS' Legislation

Since SB 297 was signed on June 25, 2015, AAG Lozano noted that she has met twice with Staff to begin the rule revision process. She also gave a brief overview of the intent of SB 297 and the shared the process underway to revise the rules.

### 2015-2016 ABET Visits

Ms. Lopez informed the members that the ABET Headquarters has extended an invitation to the Board to observe any of the upcoming ABET visits in Fall 2015 for CAC - Computing Accreditation Commission and EAC - Engineering Accreditation Commission. President Kent, Ms. Duquette, and Mr. Van Dyke expressed interest.

#### Spring/Summer Edition of the Oregon Examiner & 2015 Symposium

Ms. Lopez reported that on July 1, 2015, she and Jenn met with personnel from the Department of Administrative Services' (DAS) Publishing & Distribution Division to request assistance with design, advertisement, and publishing of the Board's Newsletter and Symposium announcements and registration forms.

Further, ACEC, PEO, and PLSO were also contacted to put out feelers for transportation topics that would be interesting to the professions along with names of professionals who would be interested in being a speaker and their contact information. Ms. Lopez received a response from PEO offering the Oregon Resilience Plan to be presented by Bruce Johnson, ODOT. Mr. Singh also provided the following options through ODOT:

- Lunch keynote talk on the Historic Columbia River Highway
- 3D Roadway Design
- Active Transportation Management
- Connected/Autonomous Vehicles
- Mobile Mapping Efforts

Staff noted that outreach was also made to TriMet for a presentation on the Tilikum Bridge that is scheduled to open on September 12, 2015. Response was not yet received. Mr. Aldridge noted that he would make an effort with a contact he has as well.

#### Board Vacancies

Ms. Lopez briefly mentioned that the Governor's Office was notified of the two vacancies; one engineering position and one land surveying position. There was no further discussion.

#### Staffing

##### HR Manager

Ms. Lopez updated the members on the interviews conducted during the second week of July for qualified applicants for the HR Manager position. She noted reference checks will be conducted this week.

##### Social & Communications Media Specialist

Ms. Lopez stated that Addy Floyd submitted her resignation on May 13, 2015; her last day was June 3, 2015. Ms. Floyd was the Social & Communications Media Specialist for the Board.

##### Administrator Review

Additionally, Ms. Lopez reported that her annual evaluation is overdue. This evaluation should be conducted every year during the July Board meeting. She noted that in the past, volunteers were asked to complete the annual performance review.

## **PRESIDENT'S REPORT**

President Kent re-visited Sue Newstetter's goals that she set as she began her term as the Board President. He noted that he would like to move forward in attaining some of those goals to include filling the Board vacancies, securing electronic access for Board documents, and completing the Board member handbooks. He also stated that he would be continuing the discussion with the members for input in setting organizational goals.

Immediately, President Kent would like to move forward with the reclassification of the Administrator. This was previously discussed and voted on in an earlier meeting. Furthermore, the yearly performance review for Ms. Lopez is due. Since Mr. Wahab previously served on this committee, President Kent asked him to chair a committee to complete the review. It was noted that an ad hoc committee will meet during August with the formal review to occur during Executive Session in September. Bill Boyd, Oscar Zuniga, AAG Lozano and President Kent will participate on the committee.

Lastly, President Kent summarized a recent telephone conversation he had with a registrant. The registrant informed him of the concerns and lack of responsiveness with regard to his interaction with Board staff. The matter related to an incorrect expiration date when the registration was issued. However, the issue could not be recreated. President Kent just wanted the members to be aware and that he would continue to monitor operations.

## **DIGITAL SIGNATURES TASK FORCE**

President Kent reported that the Task Force met on June 12, 2015 and discussed the matters contained in the Committee minutes (**Item 6: Digital Signatures Task Force Meeting Minutes of June 12, 2015**).

As a result of the rules currently in the Rulemaking Process, updating the resource on the OSBEELS web site, Digital Signature for Engineering Documents, was discussed. Although written by a Board member, it is an Oregon Department of Transportation (ODOT) document that was drafted to begin the overall discussion of digital signatures. Staff was directed to draft a letter to the Director of ODOT with a copy to Ron Singh, requesting authorization for the Board to update the document with a reference to the rules after the Rulemaking Process is complete, and to make the document an OSBEELS document.

As a result of the revised Committee Assignments effective with the August committee meetings, Mr. Boyd requested to be placed back on the Digital Signatures Task Force. President Kent approved his request for the additional assignment.

Mr. Van Dyke inquired about the proposed rules. The Rulemaking Hearing will be held during the September Board meeting. There is still time to review the language and submit comments.

## **EXAMINATIONS AND QUALIFICATIONS COMMITTEE**

President Kent reported that that EQC met on June 12, 2015 and discussed the matters contained in the Committee minutes (**Item 7: Examinations and Qualifications Committee Meeting Minutes of June 12, 2015**). Mr. Boyd requested to pull Item 6; Deny Raymond Pezonella's application for a geotechnical registration by comity [ORS 672.148(1)(d)]. It was moved and

seconded (Kent/Duquette) to approve the Examinations and Qualifications Committee Consent Agenda (Attachment B) as amended. The motion passed unanimously.

President Kent summarized Mr. Pezonella's application, including the examinations and experience submitted. During the EQC meeting, AAG Lozano advised since Mr. Pezonella is a current registrant in the state of Oregon, if a denial for registration adding the geotechnical branch is issued, he will still have the ability to practice in his area of competency as allowed by OAR 820-020-0020. It was moved and seconded (Kent/Duquette) to approve denying Mr. Pezonella's application for a geotechnical registration by comity. The motion passed unanimously.

### **Comity List**

It was moved and seconded (Boyd/Duquette) to approve the list of applicants for registration by comity containing 62 individuals. There was no additional discussion. The motion passed unanimously.

### **1<sup>st</sup> Registration List**

It was moved and seconded (Kent/Duquette) to approve the list of applicants for registration by 1<sup>st</sup> registration containing 12 individuals. There was no additional discussion. The motion passed unanimously.

### **Breen Contested Case**

AAG Lozano summarized the history of the case. She noted that contact was made with Mr. Breen to discuss the facts and options but she did not provide legal advice to him. It was moved and seconded (Boyd/Singh) to approve the final order for Joshua Breen making the completion of his fundamentals of engineering examination null and void, and of no effect. The motion passed unanimously.

### **OREGON SPECIFIC EXAMINATION TASK FORCE**

Since Mr. Zuniga was excused from the Board meeting, AAG Lozano summarized the discussion held during the June 12, 2015 meeting of the Oregon Specific Examination Task Force as contained in the Task Force minutes (**Item 8: Oregon Specific Examination Task Force Meeting Minutes of June 12, 2015**). Due to the Non-Disclosure Agreement for volunteers who help in the development of Oregon Specific examination material, the Task Force requested advice from AAG Jack McDonald.

**The Board entered into executive session pursuant to ORS 192.660 (2)(f) to review AAG McDonald's legal advice regarding the Volunteer Agreement. All members of the audience were asked to leave the room 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 while in executive session.**

It was moved and seconded (Boyd/Hoffine) to approve the Volunteer Agreement. There was no additional discussion. The motion passed unanimously.

## **EXTERNAL RELATIONS COMMITTEE**

Mr. Wahab reported that the ERC met on June 12, 2015 and discussed the matters contained in the Committee minutes (**Item 9: External Relations Committee Meeting Minutes of June 12, 2015**).

*2015 Annual P.E.O. Conference article*

*OSBEELS bids farewell to Sue Newstetter article*

*Board elects new leadership article*

It was moved and seconded (Singh/Duquette) to approve the articles as presented. There was no additional discussion. The motion passed unanimously.

## **FINANCE COMMITTEE**

Mr. Wahab reported that the FC met on June 12, 2015 and discussed the matters contained in the Committee minutes (**Item 10: Finance Committee Meeting Minutes of June 12, 2015**). It was moved and seconded (Kent/Duquette) to approve the Consent Agenda (Attachment C). The motion passed unanimously.

## **LAW ENFORCEMENT COMMITTEE**

### **Discussion with Scott Fein, Jackson County Surveyor – Duties of a County Surveyor and the Role of the Board**

After thanking Board members for their service and opportunity to speak, Mr. Fein stated his reasons for meeting were to ask questions and get further insight. He wanted to be an effective Jackson County Surveyor and licensed professional land surveyor. He recalled a January 2015 meeting with Ms. Lopez and AAG Lozano to discuss the Board's role in law enforcement and his role in professional practice issues.

Mr. Fein summarized his experience as the Jackson County Surveyor and his duties as directed by state law. County Surveyors maintain public land survey system corner monuments, the foundation of all land ownership and real property locations, act as records-keepers and, in some capacity at the local level, are essentially compliance officers for state survey law. He makes sure that documents permanently entering the public record are in compliance with state and federal law. These are required under ORS 209.250 and the BLM *Manual*. County Surveyors are dictated to review maps for compliance under ORS 209.250 by checking for certain, required elements. According to Mr. Fein, what is not clear is the following:

Surveyors set monuments and are required to submit a map within 45-days for review, which is very difficult to monitor. When a map comes in, they check the date. Some maps could have been submitted six months after monuments were set. These issues are dealt with at the office, or they are forwarded to OSBEELS if it's a repeating pattern. He added that Jackson County has a form to request an extension to the 45-day filing requirement.

Once the map is submitted for review, County Surveyors have 30 days to review. Upon completion of a checklist, the map is returned to the private surveyor who has 30 days to correct and resubmit the map. Once it is returned, County Surveyors have 30 days to review. This is not a problem for most practitioners, but for a select few it is more difficult. Either these latter

individuals do not make the corrections and return the map within 30 days, or they return the map but they “missed the boat.” This raises questions about the registrant’s competence. Is the act intentional or incompetence?

The private surveyor has 30 days to return a corrected map. If the private surveyor has questions, they can dialogue with the Jackson County Surveyor’s office. But, when that last review is hit and nothing has been corrected, the law states the County Surveyor “shall” forward the matter to the Board. What happens when a complaint is submitted? What is the Board’s process at that point? President Kent said it’s a “shall.” Mr. Fein noted the Board’s recent opinion that a County Surveyor can be held accountable in his duties as a licensee if he does not perform certain activities. However, there are economic drivers at a local level that create conflict between getting the job done correctly and just getting the job done. Correcting maps shouldn’t cycle for six months. On the other hand, does an uncorrected map go in the mail on day 31? If it is sent in, what happens?

President Kent answered there is a process. A complaint goes to the investigator. Mr. Singh asked if it’s a complaint. Mr. Wilkinson replied that, also based their conversations, he understood Mr. Fein to imply that the investigation was completed at the local level, that the allegations were valid, and that the Board would then issue sanctions based on the County Surveyor findings. Mr. Fein clarified, if at the local level, the parties cannot resolve professional issues within 90-days, then something is wrong. Either the County Surveyor is too authoritative, or the practitioner is no longer qualified to practice. Whether it’s training or some other degree, their work needs to achieve a professional level.

AAG Lozano responded that the Board does not have authority to consider “something” other than a complaint. The Board uses a “first in, first out” queuing of complaints. A County Surveyor forwarding a map to the Board does not allow the Board to take action on that map without conducting an investigation. A “forward” has to be treated as a complaint.

She continued that any respondent has due process. This requires an investigation to identify the facts, evidence, and potential violations. Once that is complete, meaning the surveyor has had the opportunity to respond to the allegations, the matter is referred to the LEC for the determination on whether to take action or not. The Board has no authority to order further education, but it can be required as part of a settlement agreement. Mr. Fein asked if it needs to come in on a Complaint Form. AAG Lozano answered no. Mr. Singh wondered if that applied to everyone. She replied no because ORS 209.250(4)(c) states it “must be forwarded” to OSBEELS. It requires “forwarding” and not the filing of a complaint. Mr. Fein questioned if that would apply to City Surveyors. AAG Lozano replied that is a more complex answer because the statute refers only to County Surveyors and not to City Surveyors. She added that it’s in her queue to draft an opinion. She recommended that City Surveyors complete a complaint form just to be sure. Mr. Boyd added that any further information provided by a County Surveyor in their cover letter could assist the investigation.

Mr. Fein stated his interest was in those practitioners who on 95% of their documents show incompetence. When specifics were brought to their attention they remain adamant about doing it their way, so they refuse to correct their maps. The harm to the public comes from subdivision

plats that are held-up because their documents are flawed, but they are good at marketing services. Because the underlying surveying work is too poor, the plat is incomplete for issuing construction permits. Lay persons do not understand the technical requirements.

Mr. Fein understood the process, but he asked the Board for assistance when there are practitioners who are working at such an “extremely low level” of proficiency. The Board’s law enforcement process takes so long that it erodes the credibility of the system because this practitioner is not being held accountable. There was also discussion that if more information is received, then additional investigation is required, which further delays the outcome. However, the work is incompetent. Mr. Fein added that he tried to work with a particular individual to elevate his practices for over two years, but with no success. Due to “process,” he can practice for another 12-18 months before final action is taken. Unless there’s a lawful reason otherwise, Mr. Boyd commented that he can continue to practice until the Board takes action.

Mr. Singh asked if the Board can identify urgent case from those that are less urgent. For example, are investigators too busy to deal with CPD issues? Is there a level of urgency that would change queuing? Mr. Fein wondered if weight is given to a complaint from a County Surveyor since “we are the experts.” AAG Lozano stated that it’s a matter of Board policy on how they want to handle complaints, including priorities. She also reminded the Board, however, that County Surveyors have been the subject of investigations. President Kent announced that the Board can discuss the issue and prioritize the list. He added that the 12-18 month window is the current situation. He expressed hope that the timeline would be decreasing with the drop in the number of CPD cases and the hiring of investigators to fill vacant positions.

Mr. Fein asked if an investigation is needed when a respondent admits to the allegations. AAG Lozano stated that an admission is evidence, but it does not prove the case, especially if they change their testimony at the hearing. At what point is there enough evidence, Mr. Fein asked. It is case dependent, replied AAG Lozano, adding it had been months since a “low level” complaint was reviewed by the LEC. Right now, complex land surveying cases are moving through the process that poses important issues.

Mr. Fein admitted there were difficult decisions that he has tried to deal with locally. Does the Board have the legal authority to address the issues given the absence of a standard of practice for land surveying? AAG Lozano agreed that the lack of standards is a challenge. However, ORS 209.250(1) makes reference to other statutes and to the BLM *Manual of Surveying Instructions*. For those practitioners who conduct cadastral surveys, the standards are somewhat clear. It gets trickier outside that statutory regime.

Mr. Boyd stated there is delay built into due process. This is true when potentially taking away someone’s livelihood. The Board issues notices at each stage of the process to ensure that the respondent is aware of their rights. Each step introduces a delay. You don’t want an authority that can take someone’s registration without following lawful processes. Mr. Fein understood the delays, but asked for guidance on handling this local situation.

Ms. Duquette noted she is a plans reviewer. She has observed a systemic, but very small minority of practitioners who consume the majority of time because of their lacking skill sets.

She suggested that rather than focusing on the enormity of the problem, she would choose two or three examples to initiate the investigation. Mr. Fein replied that the work is getting worse. Should he send it all in? In reply, Ms. Duquette stated for that reason it was all the more important to not let the investigation drag on.

Mr. Wahab asked if the work was incomplete because of the number of submittals. Mr. Fein stated that the work is negligent. Whatever they submit gets reviewed. Once they seal the document, by signing or by marking preliminary, they certify that it meets professional standards and is safe for public welfare and property. They made a decision that the survey is ready for review. If the document is not stamped, that's another problem. Unless the map is marked preliminary and they ask for an extension, their submittal is for review. If it's incomplete, then that fact is brought to their attention. However, other maps come in with no found monuments, which is not just incomplete, but incompetent. For the majority of the practitioners in Jackson County there are no problems working with them to get their maps corrected and filed. There are one or two practitioners who get far "afield," but they can be worked with to file a map. More often than not, the response is that there was not enough money in the budget. They bid too low, which is a business issue, but nevertheless is no excuse for not meeting their professional duties.

Mr. Singh reframed the issue by stating that a complaint from County Surveyor would not result in the issuing of a notice of intent without first conducting an investigation. He has seen County Surveyors going beyond their statutory authority by imposing their opinion. The question becomes which one is right, the County Surveyor or private surveyor. He then questioned if the Board can give a higher priority to County Surveyor complaints. Even within those complaints there could be more urgent investigations that require immediate need. The last point he made was staff turnover and its disruption to the investigation process.

Mr. Fein asserted that he would not tell someone how to survey, resolve their boundary, or what monuments to hold; however, can a County Surveyor make commentary during the review process? He added that the *BLM Manual* is not a cookbook. On the other end of the spectrum are metes and bounds surveys. ORS 209.250 required certain details on a map of survey, including evidence that must be explained in the narrative. He has seen narratives on maps state, "Found monuments as shown, set monuments as shown." This is not compliant with ORS 209.250, so he would provide the practitioner with guidance. Is this overreaching? Board members thought not.

County Surveyors also have to deal with ORS 92 in their review of subdivisions and plats. Deeds and other survey records can affect boundary resolution. Problems arise from inadequate deed and records research. Do I have the legal authority to require addressing this? AAG Lozano replied that he should consult with his local, legal expert for direction.

Mr. Singh thought that ORS 209.250 provides clear guidance on what is required on a map of survey. If there other matters that are less clear, such as what deeds and records to include, then he suggested that Mr. Fein submit a complaint as a private surveyor regarding a practitioner's incompetence or negligence. AAG Lozano added that forwarding a complaint can only be done as the County Surveyor, but anyone, including anonymous persons, can submit a complaint. Mr. Fein asked what if they are ignoring neighboring surveys, or if they submit maps showing no

found monuments when there are. Mr. Singh shared his experience with a County Surveyor that raised ethical questions about what was required because they refused to file the map until it was completed by that surveyor. This was some time ago, but, nevertheless, it was a concern.

In reply to a comment about checklists, Mr. Fein replied that their checklist points to specific sections of ORS. Part of the issue is that not everyone in the past was treated equally. This was personality driven. The main message he wanted the Board to hear was that complaints need to be processed in a timely manner. He suggested sending a letter to the practitioner as soon as possible, which should get their attention. If it does not, then they should be investigated.

Mr. Wilkinson emphasized that some of the recent surveying cases are problematic. The peer review panel will move the process forward by analyzing technical issues and then offering their professional practice opinions to the Board based on specific circumstances. The Board is actively seeking registrants for the panel. However, the panel framework needs to be pulled together in order to start soliciting members. The Board has posted a Request for Qualifications. Interested land surveyors need to submit their applications. The review process, including verifications, will take some time. Once the panel is up and running, we should see meaningful output on specific cases and, hopefully, the beginnings of standards of practice.

### **LEC Consent Agenda**

President Kent reported that the LEC met on June 11, 2015 and discussed the matters contained in the Committee minutes (**Item 11: Law Enforcement Committee Meeting Minutes of June 11, 2015**). Ms. Lopez informed the Board that the Committee wanted the Board to review letters of concern in case #2630, Jack Watson, PLS, and #2884, Abraham Taylor, PLS. Draft letters were in the Board's packet. As a result, President Kent requested to pull cases #2630 and #2884. It was moved and seconded (Kent/Singh) to approve the Consent Agenda (Attachment D) as amended. The motion passed unanimously.

President Kent observed that case #2630 was opened over five years ago. He suggested that the members read the LEC minutes from June 2015 as they offer the reasoning behind the letter of concern. There were found actionable violations; however, there also were a number of unique factors that lead to the Committee's recommendation to close the case with a letter of concern. The letter of concern noted a pattern of deficiencies and described what they were, but it cannot go further. It was moved and seconded (Kent/Duquette) to send the letter of concern as written and to close the case. Mr. Singh asked if the letter is a part of their file. Ms. Lopez replied yes, adding that Jack Watson has another case with allegations from Grant County Surveyor Mike Springer. Mr. Hoffine concurred adding that the Board can focus the investigation on that case. The motion passed; Hoffine opposed.

In case #2884, President Kent informed the Board that this case engendered lengthy discussion during the Committee meeting. Mr. Hoffine commented that this is a "high precision/low precision surveyor" that the Board has already sanctioned for circumstances that were similar to the current case. However, in this case Abraham Taylor recommended that his clients conduct a high precision survey before constructing a fence. The prior case turned on a lath Taylor set to denote a boundary monument position. In this case, he reported that a "centerline of the curb and location of the iron pipe at the northeast corner are strong indications of an original fence

line.” Taylor expressed a professional opinion about a boundary that was then modified by his recommendation for a high precision survey prior to construction. The clients ignored the recommendation and built the fence based on Taylor’s representation and opinion. Mr. Hoffine commented that this time Taylor did not cross the line. Ms. Duquette observed that Taylor’s client hired a surveyor who went to their property and the surveyor wrote a report stating they needed to hire a surveyor.

Mr. Singh offered a different perspective. A “high precision/low precision” survey is a terrible term, but thought nevertheless, Taylor’s report was an estimate to do a full survey. It was the clients who stepped beyond his recommendation to build the fence. Mr. Hoffine agreed with Mr. Singh adding that in a proper process, a corner search can help locate property pins and develop an estimate. However, Taylor offered an opinion about the location of the original fence line, which made the difference. Mr. Hoffine commented that he knows surveyors who will assist property owners, but Taylor went beyond. Mr. Singh stated he was comfortable with the letter and the outcome of the case; his comments were meant to clarify.

Mr. Van Dyke stated that the scenario Mr. Singh presented is possible. For him, however, Taylor offered a professional opinion that was not founded on adequate knowledge of the facts. Taylor did not do the background surveying to support his opinion. Mr. Hoffine agreed Taylor went too far, yet not far enough to warrant a sanction as he did when he set lath in the prior case. Procedurally, what happens if a Board member disagrees with the LEC recommendation, asked Mr. Van Dyke? AAG Lozano stated that members can make a motion or send the case back to the LEC.

Mr. Hoffine continued that Taylor did not set any lath or monuments. President Kent recalled the Committee discussion as whether this was negligent and incompetent surveying or a business practice matter. The clients only wanted to locate a line to construct a fence. Based on Taylor’s representation, they decided to build the fence. They did not pay for the full survey. Other than the comments in his report, nothing physically conveyed his opinion. After reviewing the definitions of surveying under ORS 672.005(2), some members asserted that it should go back to the LEC.

What was he hired to do, asked Mr. Singh. If he was hired to search for corners and tell them what to do next, that is one thing, or, was he hired to locate a boundary for constructing a fence. If the client decides to not complete a boundary survey, as happened here, then it’s difficult to see what Taylor did wrong. Mr. Van Dyke offered a different view. A lay person hired a licensed surveyor. They received a written document stating a professional opinion backed by research and field work. Taylor then offers a professional opinion that the found iron pipe is a property corner and that the pipe and curb strongly indicate the original fence line. This was an authoritative statement. Mr. Hoffine noted that Taylor wrote fence line and not boundary line.

Mr. Aldridge asked whether this case predates the previous case. Mr. Wilkinson replied that the events in this case #2884, occurred in time prior to the events in the earlier case. Ms. Duquette observed that civil penalty factors include whether it was repeated or continuous violations and whether it was an inadvertent or intentional act. As a result, prior acts can be considered.

Mr. Singh pointed out that providing estimates for engineering surveys is much easier than estimating the cost of boundary surveys. There are so many unknowns that most will not be encountered until the project begins. Clients are not going to hand over blank checks. He did not have any problems with the estimating approach. Ms. Duquette gave an example of a plans examiner with a designer and garage that encroaches. The building is “lopped off,” but there is no longer a shear wall. It would not meet code for lateral. However, the designer says it was not in their scope of work. The issue is not scope of work, but meeting design code. While not directly parallel, she asserted that scope of work is not a reason for incomplete professional work.

AAG Lozano stated that Taylor recommended a high precision survey before constructing the fence. It’s a difficult case to predict the outcome, but the grounds are there to proceed. Mr. Van Dyke was adamant that Taylor offered a professional opinion not based on the facts. However, he was willing to follow the recommendation of the two land surveyors on the Board. It was moved and seconded to approve the letter of concern and close the case. It was moved and seconded (Boyd/Hoffine) to send the letter of concern as written and to close the case. The motion passed; Kent and Van Dyke opposed.

#### **Case #2827 – McKinnis, Ronald**

This case was forwarded to the Board for discussion regarding licensure discipline for Ronald McKinnis, PLS, because it involves waiving privilege on Assistant Attorney General (AAG) Lozano memorandum titled, DOJ File No. 917001-GB0202-14, Negligence, Gross Negligence, Incompetence Update. The Board voted to waive privilege on this advice through approving the LEC Consent Agenda (Attachment D) (**Item 2: Waive privilege on DOJ File No. 917001-GB0202-14, Negligence, Gross Negligence, Incompetence Update**).

After discussion, it was moved and seconded (Boyd/Van Dyke) to issue the NOI and suspend registration for 180 days for failing to correct the Patterson survey map within 30 days, for failing to follow the statutes and the *BLM Manual*, and for incompetence with regard to the Patterson survey. The motion to suspend excluded the failure to file within 45 days. The motion passed unanimously.

#### **LaForest Contested Case**

In regards to case #2697, Dale La Forest, Mr. Wilkinson informed the Board that Mr. La Forest failed to appear for a hearing with an Administrative Law Judge (ALJ) on April 17, 2015. As a result, AAG Lozano prepared a Default Final Order for Board discussion, review, and approval. After a brief outline of the case, it was moved and seconded (Kent/Duquette) to approve issuing the Default Final Order. The motion passed unanimously.

#### **PROFESSIONAL PRACTICES COMMITTEE**

Mr. Hoffine reported that the PPC met on June 12, 2015 and discussed the matters contained in the Committee minutes. (**Item 12: Professional Practices Meeting Minutes of June 12, 2015**). There was no further discussion.

#### **RULES AND REGULATIONS COMMITTEE**

Mr. Hoffine reported that the RRC met on June 12, 2015 and discussed the matters contained in the Committee minutes (**Item 13: Rules and Regulations Committee Meeting Minutes of June 12, 2015**). Mr. Hoffine requested to pull Item 8; Create a Task Force to further discuss the hydrography issues and meet with interested parties. It was moved and seconded (Kent/Duquette) to approve Items 1-7 on the Consent Agenda (Attachment E). The motion passed unanimously.

For Consent Agenda Item 8, Ms. Lopez summarized her conversation with Representative Holvey and his desire to continue the conversation during the interim. AAG Lozano stated that with the history in adding the photogrammetry profession, Ms. Lopez and Ms. Gilbert need to participate on this Task Force. She also reiterated that the Board's stance is not to promote or to block any efforts. The Board should not take positions without gubernatorial permission. The purpose of the Task Force is to strictly observe, and if a change is made, comment on textual language, and what it will take to implement such changes. This Task Force is to be reactive; not proactive. As a result of the discussion, it was moved and seconded (Kent/Wahab) to create a Task Force to further discuss the hydrography issues and meet with interested parties that include; Chris Aldridge, Bill Boyd, Ron Singh, Mari Lopez, and Jenn Gilbert. The motion passed unanimously.

## **UNFINISHED BUSINESS**

### **Revisions to OAR 820-010-0505, 820-010-0510, 820-010-0520, and 820-010-0635**

After a few minor changes were made to spelling errors and for readability, it was moved and seconded (Wahab/Boyd) to approve the rules as amended, for the Rulemaking Process. The motion passed unanimously.

### **Hydrographic surveying status**

President Kent noted that Jason Magalen is asking for recommendations as contained in the last paragraph of his email. As it has been discussed before, the Board is unable to put forth a bill regarding the hydrography practice as the Board will continue to maintain neutral on the matter. However, it was noted that Doug Smith was instrumental in carving out the photogrammetry profession and could be a good resource for Mr. Magalen. Staff was directed to respond to Mr. Magalen.

## **NEW BUSINESS**

There was no new business.

## **LEGAL BRIEFING**

**The Board entered into executive session pursuant to ORS 192.660 (2)(f) for the purpose of discussing the North Carolina State Board of Dental Examiners v. Federal Trade Commission. All members of the audience were asked to leave the room 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 while in executive session.**

The discussion on unlicensed practice will be placed on the agenda for discussion during the August 14, 2015 Board meeting.

### **BOARD MEMBER COMMENTS**

There were no Board member comments.

### **ADJOURN**

The meeting was adjourned at 4:58 p.m.

### **November 2012 ACTION ITEMS:**

- Draft an RFP for research and consulting services to better understand the public's perception of OSBEELS.

### **March 2013 ACTION ITEMS:**

- Complete CA Geotechnical examination contract – awaiting a return draft from California.

### **November 2013 ACTION ITEMS**

- AAG Lozano will be coordinating with board members and staff to evaluate and edit Ms. Lopez's position description.

**Staff Update:** The process of revising Ms. Lopez's position description has begun.

### **NEXT MEETING**

Special Board meeting: Friday, August 14, 2015 at 12:30 p.m.

Regularly scheduled Board meeting: Tuesday, September 8, 2015 at 9:00 a.m.



# Oregon

State Board of Examiners for Engineering and Land Surveying

## Consent Agenda

*July 14, 2015 Board Meeting*

The following consent agenda is presented for the July 14, 2015 meeting of the Oregon State Board of Examiners for Engineering and Land Surveying. Items may be removed from the consent agenda on the request of any one member. Items not removed may be adopted by general consent without debate. Removed items may be taken up either immediately after the consent agenda or placed later on the agenda at the discretion of the Board President.

Item #	In the matter of:	Action:
1	Approval of the July 14, 2015 Board agenda.	<u>Motion/Second</u> (Kent/Duquette)
2	Approval of the May 13, 2015 Special Board meeting minutes.	<u>Motion/Second</u> (Kent/Duquette)
3	Approval of the May 16, 2015 P.E.O. Breakfast meeting minutes.	Hoffine pulled. <u>Approved as amended;</u> <u>Motion/Second</u> (Kent/Aldridge)
4	Approval of the May 16, 2015 Board meeting minutes.	<u>Motion/Second</u> (Kent/Duquette)
5	Approval of the May 28, 2015 Special Board meeting minutes.	<u>Motion/Second</u> (Kent/Duquette)
6	Approval of the June 12, 2015 Digital Signatures Task Force meeting minutes.	<u>Motion/Second</u> (Kent/Duquette)
7	Approval of the June 12, 2015 Examinations and Qualifications Committee meeting minutes.	<u>Motion/Second</u> (Kent/Duquette)
8	Approval of the June 12, 2015 Oregon Specific Examination Task Force meeting minutes.	<u>Motion/Second</u> (Kent/Duquette)
9	Approval of the June 12, 2015 External Relations Committee meeting minutes.	<u>Motion/Second</u> (Kent/Duquette)
10	Approval of the June 12, 2015 Finance Committee meeting minutes.	<u>Motion/Second</u> (Kent/Duquette)
11	Approval of the June 11, 2015 Law Enforcement Committee meeting minutes.	<u>Motion/Second</u> (Kent/Duquette)
12	Approval of the June 12, 2015 Professional Practices Committee meeting minutes.	<u>Motion/Second</u> (Kent/Duquette)
13	Approval of the June 12, 2015 Rules & Regulations Committee meeting minutes.	<u>Motion/Second</u> (Kent/Duquette)



# Oregon State Board of Examiners for Engineering and Land Surveying

## Consent Agenda

### Examinations & Qualifications July 14, 2015 Meeting

The following consent agenda is presented for the July 14, 2015 meeting of the Oregon State Board of Examiners for Engineering and Land Surveying. Items may be removed from the consent agenda on the request of any one member. Items not removed may be adopted by general consent without debate. Removed items may be taken up either immediately after the consent agenda or placed later on the agenda at the discretion of the Board President.

Item #	In the matter of:	Action:
1	Approve Jonathan Jenkins application approval and fees received for the April 2015 Civil PE exam be applied to the October 2015 exam administration.	<u>Motion/Second</u> <u>(Kent/Duquette)</u>
2	Approve Briana Artita-Guerrero's re-application to sit for the FE exam (OAR 820-010-0465(1)).	<u>Motion/Second</u> <u>(Kent/Duquette)</u>
3	Approve Shaun Bready's re-application to sit for the FE exam (OAR 820-010-0465(1)).	<u>Motion/Second</u> <u>(Kent/Duquette)</u>
4	Deny Steven Griffiths' application for an electrical PE registration by comity (ORS 672.200(6)).	<u>Motion/Second</u> <u>(Kent/Duquette)</u>
5	Deny Agustin Moses' application for a civil PE registration by comity (ORS 672.102(1)).	<u>Motion/Second</u> <u>(Kent/Duquette)</u>
6	Deny Raymond Pezonella's application for a geotechnical registration by comity (ORS 672.148(1)(d)).	Boyd pulled. <u>Approved;</u> <u>Motion/Second</u> <u>(Kent/Duquette)</u>
7	Approve Jungmo Ham's coursework and experience as qualifying for a mechanical PE registration by 1 <sup>st</sup> registration (OAR 820-010-0227(2)).	<u>Motion/Second</u> <u>(Kent/Duquette)</u>
8	Approve Changwon Hur's coursework and experience as qualifying for a mechanical PE registration by 1 <sup>st</sup> registration (OAR 820-010-0227(2)).	<u>Motion/Second</u> <u>(Kent/Duquette)</u>
9	Approve Chang-Uk Oh's coursework and experience as qualifying for a civil PE registration by 1 <sup>st</sup> registration (OAR 820-010-0227(2)).	<u>Motion/Second</u> <u>(Kent/Duquette)</u>
10	Approve Yu Sugimoto's coursework and experience as qualifying for a civil PE registration by 1 <sup>st</sup> registration (OAR 820-010-0227(2)).	<u>Motion/Second</u> <u>(Kent/Duquette)</u>



# Oregon

State Board of Examiners for Engineering and Land Surveying

## Consent Agenda

*Finance*  
*July 14, 2015 Meeting*

The following consent agenda is presented for the July 14, 2015 meeting of the Oregon State Board of Examiners for Engineering and Land Surveying. Items may be removed from the consent agenda on the request of any one member. Items not removed may be adopted by general consent without debate. Removed items may be taken up either immediately after the consent agenda or placed later on the agenda at the discretion of the Board President.

<b>Item #</b>	<b>In the matter of:</b>	<b>Action:</b>
1	Recommend the Board adopt the Incidental Expenses addition to the Travel Policy.	<u>Motion/Second</u> <u>(Kent/Duquette)</u>
2	Proceed with the proposal submitted by Boldt Carlisle + Smith.	<u>Motion/Second</u> <u>(Kent/Duquette)</u>



# Oregon State Board of Examiners for Engineering and Land Surveying

## Consent Agenda

### Law Enforcement July 14, 2015 Board Meeting

**Final Orders:** For the following LEC cases, the respondents have either: 1) submitted the “Options Form” electing not to contest the findings in the Notice of Intent and submitted payment in full for the assessed penalty; 2) entered into a Settlement Agreement and will submit payment when the Final Order is issued; or 3) have not responded to the Notice of Intent and are subject to a Default Final Order. The Final Orders are ready for Board approval and Board President’s signature.

Case No.	Respondent	Violation(s)	LEC Recommendation	Action
2841	Joseph A. Sturtevant	ORS 672.020, ORS 672.045, OAR 820-010-0720(1)	Final Order by Default – paid civil penalty	<u>Motion/Second (Kent/Singh)</u>

**Enforcement Case Action Items:** The Committee discussed the following cases during the meeting on June 11, 2015, and made the following recommendations (draft letters of concern in Board packet):

Case No.	Respondent	Allegation(s)	LEC Recommendation	Action
2907	Firwood Design Group, LLC	advertising land surveying services without a registered professional land surveyor on staff	Issue letter of concern	<u>Motion/Second (Kent/Singh)</u>
2630	Jack Watson	negligence or incompetence in the practice of land surveying	Issue letter of concern	Kent pulled. <u>Approved; Motion/Second (Kent/Duquette)</u>
2826	Commstructure Consulting, LLC	offering and engaging in the unlicensed practice of engineering and land surveying	Close case: Allegations unfounded for unlicensed practice of engineering; compliance met for the title violation	<u>Motion/Second (Kent/Singh)</u>
2864	Lawrence Fischer	failed to report disciplinary action by another Board	Close case: Board lacks jurisdiction	<u>Motion/Second (Kent/Singh)</u>
2873	Michael Elsberry	unlicensed use of the "engineer" title and misrepresentation	Close case: Compliance met for title violation; Board lacks jurisdiction regarding unlicensed practice of engineering	<u>Motion/Second (Kent/Singh)</u>



# Oregon State Board of Examiners for Engineering and Land Surveying

## Consent Agenda

2884	Abraham Taylor	negligence or incompetence in the practice of land surveying	Issue letter of concern	Kent pulled. <u>Approved;</u> <u>Motion/Second</u> <u>(Kent/Duquette)</u>
2893	Kerry Albright	practice of land surveying in Oregon without registration	Close case: Allegations unfounded	<u>Motion/Second</u> <u>(Kent/Singh)</u>
2904	Richard Sturm	offering and/or engaging in the practice of engineering without registration; use of title	Close case: Compliance met for title violation; allegations unfounded for unlicensed practice	<u>Motion/Second</u> <u>(Kent/Singh)</u>
2911	Paul DeMaggio	use of engineer title without registration	Close case: Compliance met	<u>Motion/Second</u> <u>(Kent/Singh)</u>

**Additional Action Item:** The Committee discussed the following matters and made recommendations as shown.

Item #	In the matter of:	Action:
1	#2291 – Deny Dale Marx course equivalency; offer new #2291 settlement agreement with terms as set by the LEC ( <i>see draft letter</i> )	<u>Motion/Second</u> <u>(Kent/Singh)</u>
2	Waive privilege on DOJ File No. 917001-GB0202-14, Negligence, Gross Negligence, Incompetence Update	<u>Motion/Second</u> <u>(Kent/Singh)</u>



# Oregon

State Board of Examiners for Engineering and Land Surveying

## Consent Agenda

### Rules and Regulations

*July 14, 2015 Meeting*

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Item #	In the matter of:	Action:
1	Approve OAR 820-010-0720 to proceed with the Rulemaking process.	<u>Motion/Second</u> <u>(Kent/Aldridge)</u>
2	Approve OAR 820-020-0015 to proceed with the Rulemaking process.	<u>Motion/Second</u> <u>(Kent/Aldridge)</u>
3	Approve OAR 820-020-0025 to proceed with the Rulemaking process.	<u>Motion/Second</u> <u>(Kent/Aldridge)</u>
4	Approve OAR 820-020-0030 to proceed with the Rulemaking process, as amended.	<u>Motion/Second</u> <u>(Kent/Aldridge)</u>
5	Approve OAR 820-020-0035 to proceed with the Rulemaking process, as amended.	<u>Motion/Second</u> <u>(Kent/Aldridge)</u>
6	Approve OAR 820-030-0005 to proceed with the Rulemaking process.	<u>Motion/Second</u> <u>(Kent/Aldridge)</u>
7	Approve OAR 820-040-0005 to proceed with the Rulemaking process.	<u>Motion/Second</u> <u>(Kent/Aldridge)</u>
8	Create a Task Force to further discuss the hydrography issues and meet with interested parties.	Hoffine pulled. <u>Approved:</u> <u>Motion/Second</u> <u>(Kent/Wahab)</u>