

1 NEW MEXICO STATE BOARD OF LICENSURE FOR PROFESSIONAL
2 ENGINEERS AND PROFESSIONAL SURVEYORS

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6 RULE HEARING
7 November 3, 2017
8 9:00 a.m.
9 New Mexico Department of Transportation
10 District 3
11 7500 Pan American Freeway, Northeast
12 Albuquerque, New Mexico

13 BOARD MEMBERS:

- 14 Mr. Karl Tonander, Board Chair
- 15 Mr. David Cooper, Board Vice Chair
- 16 Mr. Ron Bohannon, Board Member
- 17 Ms. Julie Samora, Board Member
- 18 Mr. Paul Brasher, Board Member
- 19 Ms. Augusta Meyers, Board Member
- 20 Mr. Glen Thurow, Board Member
- 21 Mr. Clifford Spirock, Board Member
- 22 Dr. Walter Gerstle, Board Member

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A P P E A R A N C E S

Mr. Perry Valdez, Executive Director
Ms. Annette Thompson-Martinez, Deputy Director
Ms. Angelica Urioste, Executive Assistant

For the Board:

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I N D E X

REPORTER'S CERTIFICATE	18
EXHIBITS ADMITTED	
Exhibits 1 through 13 Admitted	10
Exhibit 14 Admitted	14

1 MEMBER TONANDER: All right. Good
2 morning, everyone. This hearing will please come to
3 order. I'm Karl Tonander, Board Chair of the
4 New Mexico Board of Licensure for Professional
5 Engineers and Professional Surveyors. I'll be
6 acting as the presiding officer for the rule hearing
7 today.

8 The purpose of this hearing is for the
9 Board to receive public comment on proposed
10 amendments to the Board's current rules and
11 regulations. The Board welcomes everyone present at
12 this hearing.

13 This hearing is being conducted pursuant
14 to and in accordance with the provisions of the
15 New Mexico Engineering and Surveying Practice Act,
16 NMSA 1978, Chapter 61, Article 23, Section 10; the
17 Open Meetings Act, Article 15, Sections 10-15-1
18 through 10-15-4; and the Uniform Licensing Act
19 NMSA 1978, Section 61-1-1 through 61-1-33.

20 I have been reminded to let everyone know,
21 if you have a cell phone, like pretty much everyone
22 does, please put it to vibrate or quiet or off, your
23 choice.

24 The New Mexico Lobbyist Regulation Act
25 regulates activities before boards and commissions

1 in rulemaking proceedings. Contact the Secretary of
2 State's office for information and registration.

3 Public notice of this hearing was
4 advertised in the New Mexico Register on September
5 26, 2017, and in the Albuquerque Journal on October
6 4, 2017. Copies have been available from the Board
7 office since the notices were published and are
8 available for the public attending this hearing.
9 Copies of the proposed rules were available from the
10 Board office and the Board website.

11 Regarding the attendance sheet, please
12 everyone, if you have not done so already, make sure
13 that you record your name and contact information as
14 appropriate on the attendance sheet today.

15 Introductionswise, Mr. Executive Director,
16 Perry Valdez, can you call roll of Board members
17 present for this hearing?

18 MR. VALDEZ: Karl Tonander.

19 MEMBER TONANDER: Here.

20 MR. VALDEZ: David Cooper.

21 MEMBER COOPER: Here.

22 MR. VALDEZ: Ronald Bohannan.

23 MEMBER BOHANNAN: Here.

24 MR. VALDEZ: Julie Samora.

25 MEMBER SAMORA: Here.

1 MR. VALDEZ: Glenn Thurow.

2 MEMBER THUROW: Here.

3 MR. VALDEZ: Cliff Spirock.

4 MEMBER SPIROCK: Here.

5 MR. VALDEZ: Joshua Skarsgard? Paul
6 Brasher? Augusta Meyers? Dr. Walter Gerstle?

7 MEMBER GERSTLE: Here.

8 MR. VALDEZ: Mr. Chair, we have a quorum.

9 MEMBER TONANDER: Thank you. Let the
10 record shows that Marylou Poli, assistant attorney
11 general and general counsel for the Board, is
12 present to advise the Board and the Hearing Officer.

13 MEMBER BOHANNAN: Mr. Chair, Paul Brasher
14 is in the building and will be joining us shortly.

15 MEMBER TONANDER: I look forward to it.
16 In this case, because we have a relatively small
17 audience, could I get the audience members at this
18 time to at least introduce themselves?

19 MR. JULIAN: My name is Brad Julian. I
20 work for the NMDOT.

21 MR. TRUJILLO: Tim Trujillo.

22 MR. BURKHOLDER: Earl Burkholder.

23 MS. HAYNES: Margaret Haynes with NMDOT.

24 MEMBER TONANDER: So there are four people
25 attending today. Thank you very much for your

1 interest, and I look forward to your input.

2 This is a formal proceeding. The court
3 reporter has been contracted to record the
4 proceedings, as is the usual procedure. The court
5 reporter will record the proceedings and the
6 transcript will become part of the rule hearing
7 record. Therefore, persons recognized to address
8 the Board are asked to again, when you speak,
9 identify yourselves to the Board, and do speak
10 loudly and clearly enough so that the court reporter
11 can hear you and make sure that she's accurately
12 transcribing what you mean to say.

13 Let the record show that Member Augusta
14 Meyers has shown up and joined us.

15 This hearing will be conducted in the
16 following manner: Mr. Valdez will present exhibits
17 to the Board. I as the presiding officer will rule
18 on the admissibility of the exhibits offered for
19 admission, allowing questions from members of the
20 Board. Exhibits admitted into evidence are
21 available for review by members of the public.
22 However, exhibits may not be removed from the room.

23 After Mr. Valdez offers exhibits and their
24 admission has been ruled upon, I will open the
25 hearing for comments from the audience. We will

1 proceed in numerical sequence through each proposed
2 rule. We will address only one rule at a time.
3 However, you may refer to the other rules that
4 reasonably relate to that rule discussed or which
5 you relate to your comments.

6 The New Mexico Board of Licensure for
7 Professional Engineers and Professional Surveyors
8 does not follow the rules of evidence, but shall, in
9 the interests of efficiency, reserve the right to
10 limit all testimony deemed irrelevant, redundant, or
11 unduly repetitious. The decision as to whether such
12 testimony is irrelevant, redundant or unduly
13 repetitious shall be made by me as the presiding
14 officer.

15 May I have a show of hands on the number
16 of people who intend to testify or comment on the
17 proposed rules? All at once. Okay. Let the record
18 show no one has raised their hand.

19 So at this point, there are some other
20 things that I would ordinarily say here. If you
21 decide to change your mind later and something comes
22 up that you hear that you'd like to provide
23 testimony on, I would welcome that. I would just
24 ask you try, again, not to be duplicative of someone
25 else's comments, and just be respectful of time.

1 At the conclusion of this rule hearing the
2 Board will hold its meeting where they will conduct
3 discussions and take final action such as amending,
4 adopting, tabling, and so forth on the rules.

5 Regarding exhibits entered into evidence,
6 this public hearing is now open. Mr. Valdez at this
7 time, do you have any exhibits to introduce into
8 evidence?

9 MR. VALDEZ: Mr. Chair, I have the
10 following exhibits to enter into evidence. Exhibit
11 1, the legal notice published in the New Mexico
12 Register on September 26, 2017, the required minimum
13 of 30 days advance notice for a public rule hearing.

14 Exhibit 2, the legal notice published in
15 the Albuquerque Journal on October 4, 2017, the
16 required 30 days in advance notice for a public
17 rules hearing.

18 Exhibit 3, the notice to interested
19 parties dated October 2, 2017.

20 Exhibit Number 4, proposed amendments to
21 the Board's rule, Part 1 of 16.39 NMAC entitled
22 General Provisions, Professional Engineering and
23 Surveying Organization and Administration.

24 Exhibit 5, proposed amendments to the
25 Board's rule, Part 2 of 16.39 NMAC entitled

1 Continuing Professional Development.

2 Exhibit 6, proposed amendments to the
3 Board's rule, Part 3 of 16.39 NMAC entitled
4 Engineering Licensure, Discipline, Application,
5 Exam, Practice, Seal of Licensee and Endorsements.

6 Exhibit 7, proposed amendments to the
7 Board's rule, Part 4 of 16.39 NMAC entitled
8 Incidental Practice.

9 Exhibit 8, proposed amendments to the
10 Board's rule, Part 5 of 16.39 NMAC entitled Survey
11 Applications, Examinations, Practice of Surveying,
12 Seal of Licensee.

13 Exhibit 9, proposed amendments to the
14 Board's rule, Part 7 of 16.39 NMAC entitled
15 Miscellaneous Procedures for Revocation, Suspension,
16 Imposition of Fines, Reissuance of Certificates and
17 Disciplinary Action.

18 Exhibit 10, proposed amendments to the
19 Board rule, Part 8 of 16.39 NMAC entitled Code of
20 Professional Conduct -- Engineering and Surveying.

21 Exhibit 11, public comments on proposed
22 amendments from Mr. David Tull, PE, on
23 16.39.2.8.D.9.

24 Exhibit Number 12. Public comments of
25 proposed amendments from Mr. Vincent Tonc.

1 Exhibit Number 13, public comments from
2 Mr. Burkholder.

3 MEMBER TONANDER: Thank you. Exhibits 1
4 through 13 are hereby admitted into the record.

5 (Exhibits 1 through 13 admitted.)

6 MEMBER TONANDER: Mr. Valdez, are there
7 any other exhibits to enter into the record at this
8 time?

9 MR. VALDEZ: No, Mr. Board Chair, there
10 are no other exhibits at this time.

11 MEMBER TONANDER: Thank you. Any persons
12 wishing to testify and who wish to submit evidence
13 with their comments shall do so when they are
14 recognized to testify. Each document shall be
15 introduced as an exhibit into the record. Board
16 members will be permitted to ask questions before I
17 rule on the admissibility of the evidence. Upon
18 admissibility, each exhibit will be marked and
19 numbered and entered into the record.

20 At this time, each proposed rule will be
21 introduced in turn into record. I will open the
22 floor to members of the audience for testimony and
23 comments on each rule. Members of the Hearing Board
24 or of the audience may question each witness upon
25 being recognized to speak. However, any discussion

1 by the Board will be held during the meeting
2 following.

3 Would anyone wish to comment on Part 1,
4 General Provisions, Professional Engineering and
5 Surveying Organization and Administration?

6 Let the record show that no one has
7 identified themselves to speak on this.

8 MEMBER BOHANNAN: Mr. Chair, could you
9 show for the record that Paul Brasher joined us?

10 MEMBER TONANDER: Thank you very much.
11 During the introduction of the exhibits, Member Paul
12 Brasher joined us at the meeting. Thank you.

13 MEMBER SPIROCK: Mr. Chair, as did Ms.
14 Meyers.

15 MEMBER MEYERS: He mentioned me already.

16 MEMBER TONANDER: I pay attention to
17 Augusta.

18 Would anyone wish to comment on Part 2,
19 Continuing Professional Development? I would like
20 to note that Exhibit 11 that has already been
21 admitted is in reference to this part, Continuing
22 Professional Development. I just bring that to the
23 attention of the Board.

24 MS. POLI: If I may, Mr. Chair, to
25 clarify, there were three e-mail exhibits, 11, 12,

1 and 13. So what you have in your hands that says 1
2 on it is the e-mail he's referring to.

3 MEMBER TONANDER: Anyone wishing to
4 comment on Part 2, Continuing Professional
5 Development? Let the record show that no one is
6 providing comment at this time.

7 Would anyone wish to comment on Part 3,
8 Engineering Licensure, Disciplines, Applications,
9 Exams, Practice, Seal of Licensee, and Endorsements?

10 MEMBER SAMORA: Yeah, it sounds like we're
11 just waiting to hear from people, so I'd be happy to
12 make my discussion during the Board meeting.

13 MEMBER TONANDER: That is fine.

14 MEMBER SAMORA: Okay.

15 MEMBER BOHANNAN: Mr. Chair, you might
16 indicate to the audience that all of these changes
17 were reviewed by the Board previously and have been
18 discussed at length, so that it's not like we don't
19 have discussion on them; that we have actually had
20 hours of discussion on each one of these changes.

21 MEMBER TONANDER: That is a true point
22 that someone reading the transcript may not be able
23 to realize. Yes, the reason that there's relatively
24 minimal comment from the Board at this point is
25 simply because there has been a committee assigned

1 to this that I think has worked pretty diligently on
2 it, and then it has been before the Board at least
3 once for further review. So we still welcome the
4 comments.

5 At this point, Part 3, I don't see anyone
6 wishing to provide any comment.

7 Moving on to Part 4, Incidental Practice.
8 Does anyone have comments on that? Again, no one
9 wishing to provide comment.

10 Part 5, Surveying Applications,
11 Examination, Practice of Surveying, Seal of
12 Licensee.

13 MEMBER SPIROCK: Mr. Chairman, for the
14 benefit of the surveyor in the audience, the changes
15 effective July 1, 2017, in the Engineering Practice
16 Act used the words "digital geospatial data and
17 authoritative location." This amendment for the
18 finding of practice in surveying hopes to expand on
19 that definition as to describing what is and is not
20 the practice of surveying in those conditions.

21 MR. BURKHOLDER: Thank you.

22 MEMBER TONANDER: Any further comment on
23 Part 5? No more?

24 Moving on to Part 7, Miscellaneous
25 Procedures for Revocation, Suspension, Imposition of

1 Fines, Reissuance of Certificates, and Disciplinary
2 Action. Is there anyone to provide comment? Am I
3 moving too fast for people? Okay. Again, no
4 comment received.

5 Moving on to Part 8, Code of Professional
6 Conduct, Engineering and Surveying. Is there anyone
7 who wishes to provide comment on that part? Again,
8 no one has indicated a desire to provide comment.

9 I'll move on to closing the hearing. Has
10 everyone present signed the attendance sheet? I
11 want to make sure that has happened. At this time
12 the attendance sheet has been marked as Exhibit 14
13 and entered into the record.

14 (Exhibit 14 admitted.)

15 MR. VALDEZ: Mr. Chair, I ask admission of
16 attendance sheet as Exhibit Number 14.

17 MEMBER TONANDER: Thank you. To be
18 certain, the attendance sheet is now admitted as
19 Exhibit 14.

20 Do the board members have any questions?
21 Okay. Exhibit 14 is in.

22 Informing the public of the remainder of
23 the process.

24 MEMBER BOHANNAN: Let me ask one
25 clarification of legal. So these are going to go in

1 the front of the full Board at the subsequent
2 meeting, which will start, I'm assuming, right after
3 this closes. Is the Board able to modify any of
4 these changes based on this review?

5 MS. POLI: Mr. Hearing Officer, Member
6 Bohannon, yes. Changes and tweaks can be made to
7 the proposed rules so long as they're made within
8 the scope of the subject matter or something that is
9 contemplated of being within the scope. So it
10 depends on what the changes are. You know, I would
11 have to answer for each change, is this within the
12 scope, is that within the scope.

13 MEMBER BOHANNAN: So as long as it's
14 within the scope of the intent of the change, then
15 the Board is able to tweak that language at the
16 Board meeting and adopt that rule?

17 MS. POLI: That's a yes and a maybe,
18 because I don't want to say yes and then there's a
19 change that makes me say that really is outside the
20 scope.

21 MEMBER BOHANNAN: And if that rule is
22 outside of the scope, then it would have to go back
23 through the entire process; we readvertise, have
24 another public hearing for that change.

25 MS. POLI: That's correct. Yes.

1 MEMBER BOHANNAN: I just wanted to get
2 that on the record.

3 MS. POLI: Thank you.

4 MEMBER TONANDER: And to be clear also for
5 the record, counsel will be advising us in that
6 meeting whether the contemplated change from what
7 was presented today will meet your definition.

8 MS. POLI: That's correct. Yes. Thank
9 you.

10 MEMBER TONANDER: Thank you. Okay, the
11 comments submitted and discussion heard during the
12 rule hearing will be considered and may be discussed
13 further by the Board during the regular meeting
14 following the rule hearing. The Board will vote on
15 the proposed rules at that time.

16 Any rules adopted by the Board will be
17 filed at State Records Administrator in accordance
18 with the State Rules Act and New Mexico Register
19 publication deadlines. Unless otherwise noted at
20 the end of a section, the effective date of a rule
21 shall be the date of publication in the New Mexico
22 Register. Any rules not adopted may be postponed
23 for future discussion at a definite time in the
24 future or may be postponed indefinitely.

25 I'd like to thank all Board members and

1 everyone else present for their participation and
2 attendance today. We'll take a brief break to allow
3 staff to set up for the regular meeting. We'll
4 begin the regular meeting immediately following.
5 Let the record show that this hearing was adjourned
6 at 9:30 a.m. Thank you.

7 (The proceeding adjourned at 9:30 a.m.)
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1 STATE OF NEW MEXICO)
) ss
 2 COUNTY OF BERNALILLO)

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REPORTER'S CERTIFICATE

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I, Mary Abernathy Seal, New Mexico
 Certified Shorthand Reporter, DO HEREBY CERTIFY that
 6 I did report in stenographic shorthand the testimony
 set forth herein, and the foregoing is a true and
 7 correct transcription of the proceeding had upon the
 taking of this hearing.

8

9

Mary A. Seal

10

Mary Abernathy Seal
 BEAN & ASSOCIATES, INC.
 11 NM Certified Court Reporter #69
 License expires: 12/31/17

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(8909L) MAS
 14 Date taken: November 3, 2017
 Proofread by: RM

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