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To: Mo Madani

Subject: Rule 9B-72.100 Evaluation Entities Comments

The concept of evaluation entities in 9B-72.100 seems to violate numerous aspects of Florida Engineering Statutes (Chapter 471) and 61G15, Florida Administrative Code. Several such issues are outlined herein for your review:

1. With respect to existing Florida Statutes, how is a code report (such as those by ICC-ES or IAPMO-ES) classified? Is it an engineering report governed by Chapter 471?

Applicable Code Sections: Chapter 471.005, Florida Statutes; Chapter 61G15-36, FAC

Section 471.005 explicitly includes the act of “evaluation ... for the purposes of determining ... compliance ... specifications ...” in the definition of “professional engineer”. Product evaluation is also specifically addressed in Chapter 61G15-36, FAC. Code evaluation reports, which evaluate compliance to the building code, summarize this type of evaluation except that the evaluation is issued outside the scope of any specific construction project. Regardless, the decision to issue a code evaluation report based solely on the engineering judgment of the evaluation agency staff and the evaluation report applicant oftentimes must hire a consulting engineer to render professional judgments important to the evaluation process.

Evaluation reports are not developed or issued under a consensus process generally used for the development of nationally recognized codes and standards. Instead, code evaluation reports are issued solely based on the judgment of the evaluation agency staff. Moreover, many 'Acceptance Criteria', contain numerous violations of the building code. Most commonly, testing code recognized structural materials, such as dimensional lumber, light-gauge steel members, and mechanical fasteners, in lieu of designing the materials in accordance with code adopted reference standards. Instances where the minimum requirements of the building code are not met inherently require engineering judgement.

2. 9B-72 permits "evaluation entities" but from the standpoint of Chapter 471, what is the classification of an entity like ICC-ES or IAPMO-ES? Do these organizations have special recognition to practice truly “corporate” engineering? And, if so what credentials are required for a firm to practice in such a manner?

Applicable Code Sections: Chapter 471.023.

Existing statutes permit individual practicing engineers to offer to practice under the name of a business; however, they do not permit the corporate practice of engineering. It is important to note that while ICC-ES and IAPMO-ES are subsidiaries of standards writing organizations the evaluation process and issuance of code evaluation reports is NOT a standards development function. Furthermore, adoption of the International Codes by a jurisdiction does not grant ICC-ES or IAPMO-ES special authority or recognition as a corporate entity.

Furthermore, existing statutes prohibit engineering businesses to offer to practice outside the scope of their license. In the case of IAPMO-ES, it has retained an outside engineering firm,

VanDorpe Chou Associates, Inc., to provide engineering evaluation services beyond the scope of their expertise. Similarly, ICC-ES oftentimes requires applicants to hire consulting engineers for the purposes of rendering professional judgments important to the evaluation process. Again, engineering services are being offered to the public through an organization without the engineering expertise in-house.

3. For organizations such as ICC-ES and IAPMO-ES that perform engineering evaluation outside of a specific project or jurisdiction, at what point do documents prepared by such organizations need to conform to board rules? At what point does the engineer having responsible charge for the product evaluation need to be identified? Who has responsible charge over such evaluations?

Applicable Code Sections: Chapter 61G15-27.001 FAC

ICC-ES and IAMPO-ES don't offer "evaluation" services for any specific project or jurisdiction making it unclear which, if any, engineering rules or ethical standards apply to these organizations. As a result, when code evaluation reports are used as the sole basis of product approval by local code officials or design professionals, ICC-ES and IAMPO-ES have effectively circumvented the laws and rules that govern professional engineering while providing such services defined and professional engineering to the public. Responsible charge CANNOT exist for code evaluation report because under ICC-ES and IAMPO-ES process the evaluation report applicant has control over the selection of testing laboratories and design professionals. As a result, the evaluation agency has no idea whether the information provided was obtained through "lab-shopping" or "opinion-shopping". The applicant has an inherent conflict of interest, yet the applicant has control of the evaluation through control of the information provided. ICC-ES has no internal laboratory and no means to confirm the validity of submitted data.