

**MEETING OF THE BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS**

**2535 Capitol Oaks Drive
Third Floor Conference Room
Sacramento, California, 95833**

Thursday, March 24 and 25, 2011

Board Members Present: Mike Modugno, President; Jerry Silva, Vice President; James Foley; Carl Josephson; Ray Satorre; Patrick Tami; Michael Trujillo; Paul Wilburn; and Erik Zinn.

Board Members Absent: Kim Blackseth; David Luzuriaga; Philip Quartararo; Hong Beom Rhee

Board Staff Present: Joanne Arnold (Acting Executive Officer); Linda Brown (Administrative Manager); Paula Bruning (Board Liaison); Celina Calderone (Board Liaison); Susan Christ (Staff Civil Engineer); Tiffany Criswell (Enforcement Analyst); Mike Donelson (Staff Electrical Engineer); Nancy Eissler (Enforcement Manager); Joyce Hirano (Staff Civil Engineer); Ric Moore (Staff Land Surveyor); Debbie Thompson (Budget Analyst); and Gary Duke (Legal Counsel).

Thursday, March 24, 2011

I. Roll Call to Establish a Quorum

The meeting was called to order by President Mike Modugno at 9:06 a.m. Roll call was taken, and there was a quorum.

II. Public Comment

Roger Hanlin, representing CLSA spoke about current legislation to deregulate the Land Surveying board in Florida. Thomas Barry, Technical Advisory Committee member also indicated that geologists were also on list of licensing boards that would be affected by this legislation.

III. Strategic Planning

The Board conducted a Strategic Planning session

At 9:23 a.m. President Modugno acknowledged that Mr. Satorre had arrived.

V. Closed Session

Closed session was called to order by President Modugno at 3:02 p.m. Roll call was taken, and there was a quorum.

Personnel Matters, Examination Procedures and Results, Administrative Adjudication, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and (b), 11126(c)(1), 11126(c)(3), 11126 (e)(1), and 11126(e)(2)(B)(i)]

The Board recessed at 5:00 p.m.

Friday, March 25, 2011

I. Roll Call to Establish a Quorum

The meeting was called to order by President Mike Modugno at 9:03 a.m. Roll call was taken, and there was not a quorum.

At 9:05 a.m. President Modugno acknowledged that Mr. Satorre had arrived, and Ms. Bruning confirmed that a quorum had been established.

II. Public Comment

Craig Copelan, representing PCEG, discussed three items. He indicated that many of their members have English as a second language (ESL), and a concern had been raised the amount of time given to complete exams. The members requested that he address the possibility to be given additional time. Mr. Copelan inquired as to whether there could be translation of exams so those with ESL would not be impeded by the examination itself. He added that there are similar examples, such as the Department of Motor Vehicles, which provides translations of vehicle code tests. Mr. Copelan's second item was in regards to the retired licensure status. He understands that someone can retire a license, continue to use the title "Engineer" but is not allowed to practice. The inquiry was from a person considering retirement, who is looking into future if the licensee's life situation changed and he needed to return to work if he would be able to return to active status after electing to retire his license. Currently this is not allowed. This licensee would like to know if this would be a possibility. Mr. Copelan's third item was in reference to a discussion that took place during the Strategic Plan meeting. It was mentioned that the Board would like to add a Professional Geologist to Board staff to assist with exam development and enforcement issues. This is an item that PCEG is in favor of and encourages the addition of a Professional Geologist on staff.

Mr. Foley commented that when a person retires from a job that does not mean that they should necessarily retire their license. He explained that the Board added a retired license status for people who were retired and no longer wished to have their license but did not want it to be in a delinquent status. Mr. Foley suggested that a delinquent status may appear in credit reporting and consider it to be a delinquency. The Board looked at this and decided that a retired status be granted to those who chose to do so. However, if they wanted to reinstate their license, they would have to take the exams again. The retired license is not a method of putting a license on hold; it is a method of not ending up with something on the record that indicates that the licensee is delinquent and it is an

honorable way of letting the license expire. That was the intent behind the retired status.

Mr. Tami indicated that NCEES, which develops the national exams, looked into the translation of exams; however, the psychometricians cannot create an equivalent translatable exam. Therefore, NCEES does not provide or allow for translations of its exams. Mr. Copelan asked if they had ever been approached regarding the request of additional time. Ms. Calderone indicated that such a request would have to be made under the Special Accommodations provisions and fall within ADA guidelines to be considered a disability; ESL is not considered a disability.

Bob DeWitt, representing ACEC of California, addressed their concerns over the SWPPP regulations that they believe are going to prevent civil engineers from continuing to practice preparations of SWPPP plans if they do not get an additional certification from another State agency. He indicated ACEC is still studying the issue and expects to have information back to the Board perhaps for the next meeting. Mr. DeWitt also mentioned that they still have a pending item with Mr. Duke regarding the letter from Mr. Corn responding to the questions that were raised on the reporting requirements. Mr. Duke confirmed that he is working on the response.

Curt Burfield introduced himself and advised that he has just been appointed to represent the Office of Land Surveys for the Department of Transportation and act a liaison to the Board.

Mr. Trujillo joined the meeting at 9:25 a.m.

VI. Open Session to Announce the Results of Closed Session

Ms. Eissler reported that the Board, in Closed Session, adopted four stipulations, four default decisions, and three proposed decisions. Mr. Duke indicated the Board also discussed a personnel matter

IV. DCA Director Updates

Kim Kirchmeyer, Acting Chief Deputy Director, provided an update of projects and matters of concern currently before the Department of Consumer Affairs. Ms. Kirchmeyer indicated that the Department is working to address the Governor's Executive Order relating to the use of state vehicles and home storage permits for those vehicles; she advised that she believes this Order does not affect this Board. Ms. Kirchmeyer believes we will see more Executive Orders as the year progresses that address cost savings for the boards and all the departments within state government, such as the cell phone Order which was the first one that affected this Board. Ms. Kirchmeyer stated that one thing that is affecting this Board is the hiring freeze. On Tuesday, February 15, 2011, Governor Brown issued an Executive Order for a statewide hiring freeze, and the Order prohibits

the hiring of employees and the entering into personal service contracts to compensate for the effects of the hiring restrictions. The Order did provide an exemption process for positions that are essential to carry out certain responsibilities including core functions of the department's statutory missions. This is broader than the prior hiring freeze directive that did not include that term. The department received a budget letter from the Department of Finance, and DCA identified the process for submitting freeze exemption requests. The requests require a justification as to how the request meets the criteria related to the Board's statutory mission and also the consequences if those positions are not filled. DCA will work with the boards, and the budget office is already working with the boards to get these freeze exemptions prepared so that they can be submitted. The most important items are the justifications that are needed to explain the consequences if these positions are not filled, specifically what type of consumer harm might occur. These exemptions will be reviewed by the department, State and Consumer Services Agency, the Department of finance, and to the Governor's office for approval. Ms. Kirchmeyer stressed the importance of showing how critical the positions are to meet the mission of the Board. Ms. Kirchmeyer added that there was a new State and Consumer Services Agency Secretary appointed this week, and this will help speed up the process.

President Modugno questioned the status of the exemption requests to appoint the Interim Executive Officer and a permanent Executive Officer. Ms. Kirchmeyer explained that, as of March 11 they were able to process internal promotions. Because the Board had appointed Ms. Arnold as the Interim EO, and it is a promotion for her, they were able to process it; however, they are not able to backdate it to December as promotions were not available at the time. Ms. Kirchmeyer indicated that she is aware they have an exemption request to backdate the appointment to December so that will be moving forward; it is still at the Department but will be submitted to Agency within the next two weeks if not the next week. She added that they have advised the budget office that the Interim EO and permanent EO requests need to be moved along to Agency as quickly as possible.

Ms. Arnold inquired about 15 proctor hire requests to meet the requirements of the contract with NCEES for the Board's April 8 and 9 examinations. She added that there will be a person from NCEES at each exam site to ensure compliance with the contract. Ms. Arnold stated that the request has been submitted with changes to the budgets. Mr. Foley stated that the Board would have to cancel the exams if the request was not approved. Mr. Tami indicated that because the needs of the contract were not being met, that the exams would have to be cancelled. Mr. Moore added that the paperwork is ready for submittal. Ms. Arnold inquired if it would be acceptable to submit the paperwork to personnel prior to receiving the exemption approval, and Ms. Kirchmeyer agreed. Ms. Kirchmeyer indicated that she would note that this request has the highest priority for the Director's meeting with the new Agency Secretary to be held next week.

President Modugno stressed the financial impact would be great if the Board were to lose an exam because it did not have sufficient proctors.

Mr. Josephson inquired about Subject Matter Experts (SMEs) and whether or not they would also have to go through this exemption process. Ms. Kirchmeyer stated that they would not. The contracts that the Executive Order is referring to are for contracts that would be used to fill vacant positions.

Ms. Kirchmeyer addressed the Consumer Protection Enforcement Initiative (CPEI). The department has posted the second set of performance measurements on the department's website; she encourages members to review these measurements that are available to the public as it shows how long it is taking for the Board's enforcement timelines. Ms. Kirchmeyer will also be asking for the enforcement program update from all boards so we can be aware of the improvements that have been made. She added that they will be providing a more extensive enforcement report that will include an overview of the enforcement statistics that have been gathered with other information regarding enforcement processes and a side by side with comparable boards.

She also added that the BreEZe project achieved another milestone with the receipt of final proposals in March. Currently the proposals are being evaluated for technical and administrative merit as well as how well they meet DCA's business needs. A winning contract will be awarded in April and between April and August, the project will be securing the final contract approvals from the Department of General Services and the legislature, and it is anticipated to start in August 2011. She also is encouraging the boards to webcast meetings to make them more transparent to the public. It is free and is provided by the department.

Mr. Tami asked about the status of credit card processing. Mr. Donelson said there had been some contracting issues; however, the Board will begin testing in the next couple of months and, hopefully, start in June. Mr. Tami stated that there are 100,000 licensees and if they renew every two years, that is 50,000 per year, which equates to approximately two PYs for workload and costs; therefore, not implementing this is a huge cost to the Board. Ms. Kirchmeyer advised that it is not that prevalent for licensees to use the online tools and, she encourages the Board to do outreach to licensees to use the online function. Mr. Foley asked if it will accommodate debit or credit cards, and Ms. Kirchmeyer confirmed as long as it has the Visa or MasterCard logo that it is acceptable.

VII. Update on Recruitment/Appointment of a New Executive Officer

Mr. Wilburn stated that the final filing date is April 1, 2011. He indicated that the plan is for the sub-committee to review the applications and then for the full Board to conduct interviews with the top candidates at the May Board meeting.

VIII. Temporary Authorization Applications

Susan Christ explained that Steven Napolitano, who had been granted a temporary authorization at the August Board meeting, had requested another temporary authorization for the same project because there were some delays on the project and they were not able to complete it in the 180-day time period allowed by the statute for temporary authorizations. Ms. Christ stated that Mr. Napolitano took the seismic principles and engineering surveying examinations in October of 2010 and failed them both; she indicated that Mr. Napolitano intends on taking the April 2011 examinations. Mr. Foley questioned how issue a license to someone to design a building who failed the seismic portion of the examination. Mr. Duke reminded the Board that it was not granting him a license; it would just be a continuation of a temporary authorization that was approved at the August meeting. Mr. Foley pointed out that it has been determined that through testing that Mr. Napolitano is not minimally competent. Mr. Duke stated that there is not a requirement for an examination, which is the whole point of the temporary authorization. Mr. Tami indicated that he looks at what type of project this is and the number of licensees we have in California, specifically in this area, and he believes they can find someone else with this specialty that could design it. Ms. Christ stated that Mr. Napolitano is only the back-up and that his company has another California licensed civil engineer in responsible charge of this project.

MOTION: Mr. Tami/Mr. Foley moved to deny,

VOTE: 9-0, motion carried.

IX. Executive Officer's Report

A. Legislation

1. Discussion of Legislation for 2011: AB 275, AB 958, AB 1023, AB 1210, SB 543, and SB 692 (Possible Action)

AB 275 Rainwater Capture Act of 2011. This bill would enact the Rainwater Capture Act of 2011, which would, among other things, authorize landscape contractors, holding a specified classification, to design and install all exterior components of a rainwater capture system.

Mark Smith, lobbyist for the American Council for Engineering Companies (ACEC), addressed the Board regarding this bill. They are concerned about intrusion into the scope of civil engineering and have not figured out the correct approach to solve this matter. There have been some amendments offered; however, they are not entirely comfortable with those. They have looked at the exemptions that exist in the PE Act for certain types of residential structures and are considering incorporating that into what this proposal is. He stated that ACEC is opposed unless amended on this particular bill, and the amendments are a work in progress.

Richard Markuson, representing ASCE, stated that the language that they have proposed has been rejected; however, the sponsor and author have been willing to try and resolve any concerns either by narrowing the scope of the capture system to only a single or multifamily dwelling or incorporating language to require that projects that require special engineering expertise be designed by a civil engineer. The sponsor's desire is only to provide the systems for residential dwellings, not for large commercial or industrial projects.

Mr. Smith indicated that they would like the bill to clearly state that civil engineers can perform the work on all matter of construction so they are not locked out of providing services for residential construction. Mr. Smith stated that they are willing to work with the Board on the appropriate language and a solution.

MOTION: Mr. Josephson/Mr. Silva moved to oppose unless amended.

VOTE: 9-0, motion carried.

AB 958

Regulatory boards: limitations periods. Existing law requires some boards within the Department of Consumer Affairs to file disciplinary action accusations against licensees for various violations within a specified time. This bill would delete those specified limitations periods for each board and would instead impose a specified limitations period on all boards within DCA.

Mr. Smith indicated that ACEC has taken a support position on this bill.

Ms. Eissler indicated that the accusation is the pleading document that is filed when the Board is pursuing formal disciplinary action against a license. Once the Enforcement Unit completes the investigation and determines that formal disciplinary action should be pursued, the case is submitted to the Attorney General's Office, and the Deputy Attorney General prepares the legal accusation document which is then signed by the Executive Officer; once it is signed by the Executive Officer, it is considered filed. The statute of limitations imposed by this bill does not include the time once the accusation is filed to go through the hearing or settlement negotiation process to reach a final disciplinary decision, but it does put time limits from when the Board receives the complaint or from when the action occurred that caused the violation. There is a four-year statute from when it occurred, and in many cases, we do not receive the complaint until after the four-year period from when the incident occurred. The statute of limitations would prevent the filing an accusation which would leave very little action that the Board

could pursue; the Board could not take formal disciplinary action against a licensee if it was decided their work was incompetent and posed a threat to the public; the only enforcement action that could be taken would be the issuance of a citation. The Board could not revoke the license nor place the licensee on probation.

MOTION: Mr. Foley/Mr. Silva moved to Oppose.

VOTE: 9-0, motion carried.

AB 1023

Maintenance of the codes. This bill would make nonsubstantive changes to various provisions of law based on the recommendations made by the Legislative Counsel to the Legislature. This bill repeals Sections 6731.1, 6731.2, 8726.1 and 8761.1 of the Business and Professions Code.

Mr. Smith indicated that ACEC has taken an opposed unless amended position on this bill.

MOTION: Mr. Tami/Mr. Silva moved to oppose unless amended.

VOTE: 9-0, motion carried.

AB 1210

Civil Engineering. This bill (currently) would make nonsubstantive changes to the Engineer's Act (Section 6731.1 of the B&P Code).

Mr. Smith indicated that ACEC is sponsoring this legislation. ACEC has had conversations with the Board about the implementation of a State Water Resources Control Board (SWRCB) general construction permit. The preparation and development of Storm Water Prevention Pollution Plan (SWPPP). ACEC wrote a letter to the Board and the State Water Resources Control Board in June/July 2009 with concerns that the SWRCB was proposing to allow the practice of civil engineering by non-licensed people. The regulations have since come out, and ACEC remains convinced that portions of the preparation of a storm water pollution prevention plan fall under the scope of civil engineering, and the State Water Resources Control Board has created a certification of a QSD and a QSP and the achievement of that certification allows anybody, including people who are not civil engineers to develop any storm water pollution prevention plan. Mr. Smith advised that this legislation will be amended to address that situation. They feel it is absolutely inappropriate for another board to impose on this Board and professional engineers who can and cannot do the work of a professional engineer. The other item they are considering tackling is that the SWRCB is still requiring the certification if a civil

engineer wants to prepare a SWPPP. The QSD/QSP certification, which costs \$2,500 to \$5,000 for a 2-3 day training course, is an additional requirement on the practice of a licensed civil engineer, and SWRCB should not be able to do that. It should remain a jurisdiction of this Board. ACEC would like the support of the Board in addressing these issues because they feel is important to defend the scope and practice of civil engineering Ms. Arnold explained to the Board that this bill is a spot bill, and the issues Mr. Smith is referring to are not yet addressed in the bill; therefore, the Board should not take a position until it is able to review the language once it is amended into the bill. Ms. Christ indicated that during the regulatory process, the Board submitted language to SWRCB that was accepted and included in the regulations; this language specifies that any work that constitutes professional engineering must be done by an appropriately-licensed professional engineer. She explained that she has yet to be provided with any evidence that the work being done crosses into the practice of civil engineering; from what she has reviewed, it is sediment control and not hydrology. Mr. Foley indicated that it is hydrology because they are calculating flows, etc. that are causing erosion, and the whole point is to minimize erosion control at construction sites and what is being done involves calculations. Ms. Christ pointed out that if the individuals performing the work are practicing civil engineering without being licensed or working under the responsible charge of a licensed civil engineer, then they are in violation of not only the Professional Engineers Act, but also the SWRCB regulations, and complaints should be submitted to the Board's Enforcement Unit. Mr. Smith indicated that ACEC is not opposed to someone with a QSD/QSP certification who is not licensed as a civil engineer doing this work if they are under the responsible charge of a civil engineer; ACEC does not want to mandate that only civil engineers can do this work as long as the work is done under the responsible charge of a civil engineer.

MOTION: Mr. Josephson/Mr. Satorre moved to take a watch position.

VOTE: 9-0, motion carried.

SB 543

Business and professions: regulatory boards. This bill extends the sunset date to 2016 for various DCA regulatory boards and bureaus, including this Board, that are being evaluated by the Joint Sunset Review Committee.

MOTION: Mr. Tami/ Mr. Silva moved to support.

VOTE: 9-0, motion carried.

SB 692 Professional Engineers. This bill would change the disciplines currently licensed as “title act” engineers to “practice act” engineers.

Mr. Smith noted that ACEC opposes this bill

MOTION Mr. Foley/Mr. Josephson moved to watch this bill.

VOTE: 8-1-0, motion carried. Mr. Modugno voted no.

2. **Legislative Proposals for 2011** – No report was given
 3. **Regulation Status Report** – Ms. Eissler advised that the Approved Curricula and Waiver of Fundamentals Examination regulatory proposal has been submitted to Office of Administrative Law for the final review and approval. OAL has 30 working days to do the review. She added that the Board had approved moving forward with regulations to adjust the geology examination and application fees to conform to statute and that notice would be published on March 25, 2011; a public hearing will be held on Thursday, May 12, 2011, at 9 a.m. She advised that Debbie Thompson is working on the rulemaking package regarding Board Rule 407 relating to the engineering and land surveying fees, which the Board approved at its January meeting.
- B. Sunset Review 2010** - Ms. Arnold indicated than Mr. Foley made a presentation on Monday, March 21, 2011, to the Senate Business, Professions and Economic Development Committee relating to the Board’s Sunset Review. She added that the Committee is very supportive of the Board. She advised that some of the issues addressed involved the elimination of the state-specific structural engineer examination and the issue of how to regulate the practice of geophysicists. She noted that the geophysicist examination costs \$50,000 to develop and administer; however, in the last several years, only two people have taken the examination. Mr. Foley acknowledged staff’s efforts in preparing the Sunset Report and his presentation. Mr. Zinn would like to discuss at the next TAC meeting of possible solutions for the Geophysicist exam. Mr. Tami and Ms. Arnold indicated that it was a positive hearing.
- C. Personnel** – Ms. Arnold reminded Board members to complete and submit their Form 700s by April 1, 2011, and Mr. Duke added that they would be subject to daily fines if not the forms are not completed and submitted by the April 1 date. In addition, Ms. Arnold advised the Board members of the ethics and sexual harassment prevention courses that have to be taken within six months of appointment and every two years thereafter.

Ms. Arnold continued onto personnel changes within the office by stating that Vania Sevilla who has worked in the Licensing Unit since 2007 took a position in the Geology program, effective December 2010; Linda Bronson replaced Ms. Sevilla in the Licensing Unit; Sarah Peters, from the Medical Board, took a half-time position in the Examination Unit on February 2, 2011; Venessa Martinez, from the Contractors State Licensing Board in San Diego, will be joining the Board as of Monday, March 28, 2011; Paula Bruning will be returning to the Court Reporter Board; and Celina Calderone will be the new Board liaison.

- D. Enforcement** - Ms. Eissler indicated that there has been reorganization in the Enforcement Unit; Jackie Jenkins is handling the unlicensed citation cases, and Christine Doering is handling citations to licensed people. She added that the Enforcement Unit is getting back on track with holding informal conferences for the people who request those upon receiving the citations and also sending the cases to the Attorney General's Office if the people ask for a formal appeal hearing.

She advised that there were concerns with how the Geology Program cases had been handled in the past and whether all the appropriate due process rules have been followed during the investigations; therefore, it was necessary to reinvestigate most of the cases. Ms. Eissler indicated that the analyst assigned to work the Geology Program cases worked for the former Geology Board and also has other enforcement experience from other boards and bureaus within DCA. In addition, Larry Kereszt has been assigned to work with the Geology Program on their enforcement cases to resolve old cases, ensuring that they are fully and appropriately investigated.

E. Exams

Linda Brown reported that she attended the Geology examinations on March 4 and 5 in Long Beach with Patty Smith and Chief Proctor Judy Tomlinson and Tom Kelty, an associate professor of Geology, who worked tirelessly to transport staff and candidates to/from exam with no compensation. Ms. Brown requested that the Board present a certificate of acknowledgment to Mr. Kelty; the Board agreed to do so.

Ms. Brown added that Geology would be going to computer based testing most likely this fall for State Specific exams only.

1. Release of Examination Results – No report was given

2. Status of April 2011 Examinations

Mr. Moore indicated that the number of candidates taking the PELS exams is down 1,800 exams, which has been the trend for the last few years; the majority of the decline is with the EIT examination; however, civil exams are down 250, and the land surveying continues to go down on all levels, for both national and state exams; chemical is up by four candidates; and

the new structural exam is up by one candidate. Mr. Moore reported that there are slightly fewer than 12,000 exams scheduled for April 2011. Vice-President Silva inquired if the decline was due to the economy; Mr. Moore stated that he attributes the decline to two items: the economy and the NCEES registration process. Registration opened December 6, 2010, and closed February 18, 2011; the Board's final filing date was December 17, 2010, for brand new PE and PLS applications and January 21, 2011, for the brand new EIT and LSIT applications and for all refiles. The Board received about 600 EIT applications after the final filing date. Mr. Moore said there seems to be some confusion with registering with NCEES versus filing the application and fee with the Board; some candidates think they have until NCEES registration closes to submit the application to the Board, even though the Board's website specifies the different dates, and the NCEES website directs the candidates to check the final filing dates on the Board's website. Mr. Moore explained that by having the final filing date before the registration cut-off date, Board staff is able to contact applicants who have not registered with NCEES or who have not registered for the correct examinations so that the applicants can correct these errors and still sit for the examinations; if the Board's final filing date was on or after the NCEES registration cut-off, there would be no way to correct these errors.

Annette Lockhart, representing CLSA, stated that Mr. Moore has done outreach and that the Board staff has been very responsive with questions and concerns from applicants regarding the registration process.

Mr. Moore indicated that the Board now offers a flow chart on the Board's website to assist with the application process.

Mr. Copelan reiterated that in addition to having the exam available in other languages, the Board needs to have the application available in other languages as well for ESL candidates.

Mr. Moore added that the Board is set up to offer the historical 8-hour state structural exam one more time in October 2011; the exam is ready, and it will be offered to those who have previously passed the Structural II; a list is being compiled to notify those candidates so they have the opportunity to sit one more time for this exam.

Mr. Moore explained that has also begun on the replacement state structural exam; however, the content, size, and length of the exam has yet to be determined. Mr. Josephson indicated that it will be reviewed by the Structural Engineering Technical Advisory Committee.

F. Licensing – Ms. Brown advised that the new wall certificates were sent out two weeks ago.

G. Publications - No updates

H. Website - Mr. Tami asked if License Lookup could be changed to have the ability to look up licensees by discipline. Ms. Eissler explained that License Lookup is not a feature that the Board staff has control over; any changes must be done by DCA. She advised that, even though the license discipline is a separate field that is displayed for each record, the programmers have indicated that it would be too difficult to program it as a searchable field. Ms. Kirchmeyer said that if it is not a quick fix, the department will not look at it as staff is limited, and it may have to wait until BreEZe is introduced in 2014.

Ms. Eissler added that there are links to two pdf documents that contain the numerical listing of civil engineers and land surveyors so that interested parties can at least find the person's name that is associated with that number and the approximate timeframe of when that license was issued. The Board has the two pdf documents available on the website so that people could look up those historical tag numbers.

Mr. Modugno asked if a licensee is deceased will it show on the website, and Ms. Eissler confirmed it would if the Board had been notified of the licensee's death and if the licensee had a renewable license at the time the Board converted to its current database in the mid-1980s.

X. Consideration of Rulemaking Proposals, as follows:

Update on Proposed Amendments to Title 16, California Code of Regulations Section 407 – Fees – Ms. Thompson is planning to submit the rulemaking package to OAL for notice by the end of the month, with a possible hearing date at the end of May or the beginning of June. She indicated that it would be beneficial to have a Board member present at the hearing.

XVI. Administration

A. Fund Condition - Ms. Thompson distributed an updated fund condition. She indicated

The Engineers and Land Surveyors' Fund revenue received through January 31, 2011, of this Fiscal Year was \$7,438,388 which is a \$214,111 reduction from the prior Fiscal Year revenue received at this time. This revenue drop is a result of both the normal renewal revenue decline that occurs every other Fiscal Year and the reduction in exam applications received in FY 2010-11.

The Geologist and Geophysicists' Fund revenue received through January 31, 2011, was \$630,502 which is a \$15,278 increase as compared to the prior Fiscal Year. This includes a \$49,155 increase in license renewal revenue and a drop of \$34,889 in exam applications and initial license fee revenue from the prior Fiscal Year.

B. FY 2010/11 Budget

Ms. Thompson reported that, as of January 31, 2011, the Engineers and Land Surveyors Fund expended \$4,540,305 and the Geologists and Geophysicists Fund expended \$340,493.

C. FY 2011/12 Budget Change Proposals

Ms. Thompson reported that, in January, the Board submitted Spring Finance Budget Change Proposals for FY 2011/12 relating to Enforcement Attorney General Expenses and NCEES examination administration costs. The Department of Finance denied the Attorney General BCP and has requested further information from Board staff for the NCEES Exams Administration BCP. An update regarding approval/denial will be reported at the Board meeting.

XI. Approval of Delinquent Reinstatements

MOTION: Mr. Foley/Mr. Satorre moved to approve the Delinquent Reinstatements in the agenda as follows:

CIVIL

CALLAS, BASHAR

Reinstate applicant's civil license once he/she takes and passes the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

IRWIN JR., THOMAS W.

Reinstate applicant's civil license once he/she takes and passes the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

MECHANICAL

RICCARDELLA, PETER C.

Reinstate applicant's mechanical license once he/she takes and passes the Board's Laws and Regulations Examination and Principles and Practice of Engineering, and pays all delinquent and renewal fees.

VOTE: 9-0, motion carried.

XII. Information Technology Updates

On-Line Renewals/Credit Card Renewals

Mr. Donelson discussed the on-line renewal process. He is hoping that it will take only three months for the test phase so that credit card payments for license renewals could begin in June. He reported that contracts with the vendors have been approved. He indicated that the system will be "Blind Payments" which means that licensees can insert any fee in the fee field; if a licensee inserts \$1, they will be charged \$1, and it will later be reconciled by Board staff, who will send a letter to the licensee indicating that the payment was deficient and the correct amount to pay. Mr. Donelson indicated that he knows of only one other board on this system today, and he did not receive much feedback with licensees having that type of issue. The Board will start off with a small pool of candidates in

a specific licensee discipline first to see what the implications are, and then introduce it to the entire licensee population.

XIII. Address of Record Available to the Public via website

Ms. Eissler indicated that there have been some concerns expressed ever since License Lookup became available on the website that it includes the licensee's address of record as part of the information. Ms. Eissler explained that the Board is required by law to include the licensee's address of record as part of the information available through License Lookup. She further explained that the address of record does not have to be a home or personal address; it can be a work address, a post office box, or any other address at which the licensee will receive official mailings from the Board. She also indicated that the licensee does not have to advise the Board whether the address of record is a personal or business address. Ms. Eissler advised that the License Lookup database is not a database that is searchable through standard internet search engines, such as Google; the address of record is only shown when someone searches for a licensee through the Licensee Lookup database. Ms. Eissler informed the Board that if it wanted to no longer include the address of record as part of the information that is available via License lookup, it would require statutory change to the Business and Professions Code to indicate that the Board will not disclose the address of record through its website. She added that Mr. Duke had indicated if the law was changed so that the Board no longer had to include the address of record through License Lookup, it would then become discretionary to the Board whether the Board were to disclose addresses of record to the public and in what manner they were disclosed. Mr. Tami indicated there are several boards that do not have address of records available to the public. Ms. Eissler stated that if the Board chose not to disclose addresses of record, there could be situations where someone is trying to find that licensee for legitimate reasons, and Board staff would have to decline the public's request.

Ms. Lockhart indicated that it is a personal problem for her as she was affected by someone's ability to acquire her address. She asked if the public could contact the licensees via e-mail addresses or some other means of contact other than actual physical addresses. Mr. Copelan with PECG indicated that he supports what Ms. Lockhart has said, and there are concerns with licensees who do not want people finding them for safety reasons.

Ms. Eissler said that the licensees would still have to provide the Board with a mailing address for correspondence; the issue would be whether or not the Board would give this information out to the public. Ms. Eissler also noted that the laws would probably have to be changed to require licensees to provide the Board with an e-mail address or phone number to give to the public.

Mr. Tami stated that the Board's mission is to protect the health, safety, and welfare of the public, including of the licensees. He suggested investigating what the Nurses Board is doing and possibly opt out of providing an address.

Mr. Foley noted that building departments will not release copies of permitted plans to the property owners unless the original design engineer consents to the release. Ms. Eissler indicated that consumers and building departments often contact the Board seeking the address of record of a licensee so that permission can be obtained to release plans; if the Board chose not to release the address of record, the consumers would have a more difficult time obtaining copies of the plans.

Ms. Eissler stated that Business and Professions Code Section 27 indicates that the Board must include the address of record for its licensees as part of License Lookup. She advised that the first step would be to amend the statute to remove the requirement that the Board include the address of record in License Lookup; once that was done, then the Board could decide when and how to disclose the address.

Mr. Duke indicated that the primary purpose of the address of record is for purposes of the Board to be able to contact licensees. A secondary purpose of disclosure of the address of record is much more recent. Section 27 of the Business and Professions Code is relatively new and was developed after the development of the internet. The purpose of that law is to help out consumers in locating licensees. However, the primary purpose is for the Board to have a means of contact. The Information Practices Act, which is part of the Civil Code, provides that personal information cannot be disclosed unless there is an exemption; there is an exemption which provides the discretionary authority for this Board to release address of record information to the public. The Board for Registered Nurses elects not to do that; however, it is discretionary.

President Modugno suggested the Board discuss this further at the next meeting. Ms. Eissler indicated that she would provide the actual language from Section 27 with suggested revisions and information from other boards on their procedures at the next meeting.

XIV. California's New Green Building Code

Ms. Christ indicated that information was provided by the California Society of Professional Engineers (CSPE) questioning whether the local building departments could require certifications for individuals beyond a professional engineer license. Ms. Christ explained that, under the new Green Building Code, there is a PERS program, which is a home energy rating system; in order to be a PERS certified rater, a person has to go through a certification program. Under this program, the rater can certify that homes are energy efficient and meet the requirements of California Building Code This certification is being enforced by local building departments. She added that she and Mr. Donelson spoke to William Schock, a past Board member, who is the Chief Building Official with the City of San Leandro and the Chair of CALBO's Green Building Committee, regarding these requirements. She explained that, in the past mechanical engineers provided these rating certifications; however, the work itself does not fall with the definitions of civil, electrical, or mechanical engineering. Since the

work itself is not professional engineering, it does not have to be done by a professional engineer, and it would not encroach on professional licensure for local building departments or other state agencies to require additional certifications for the individuals who provide these ratings. Ms. Eissler stated that the board has not received any complaints or inquiries from engineers indicating that they are not being allowed to complete this task without the proper certification. Ms. Christ indicated that no action is necessary, but she will keep the Board apprised.

XV. Proposed Changes to the Written Contract Requirements

Ms. Eissler advised that there had been some discussion at the November meeting as to what could be done to require licensees to provide information to their clients about the Board so that consumers would know to verify with the Board that the licensee is in good standing; the suggestion was made that maybe it should be included in the written contract as a notification to check the Board to make sure the person the consumer is contracting with is licensed. Ms. Eissler advised that she researched this issue and learned that several boards and bureaus within DCA require their licensees to provide detailed information to consumers as to how to verify a license; for example, contractors are required to include a lengthy statement in their contracts about licensure and how to contact the Contractors State License Board to verify the license status. Ms. Eissler noted that there are provisions in the PELS and Geology regulations that require licensees to provide notice to their clients that they are licensed by this Board, and while there are a variety of ways to do so, it does not require the licensees to provide information on how to contact the Board. She noted that there are statutes for professional engineers and professional land surveyors that require the use of a written contract except in certain situations; these statutes also list the minimum elements that must be included in the written contract; however, there are no similar written contract requirements for geologists and geophysicists. Ms. Eissler advised that if the Board wishes to move forward with this more research should be done to determine whether statutory or regulatory changes would need to be made and what language should be included.

Mr. Duke commented that the Geologist and Geophysicist Act definitely would have to be amended in order to require a written contract to begin with. He also indicated that the statutes in the Professional Engineers Act and the Professional Land Surveyors' Act state that the information to be included in the contract is "not limited to" the items listed; therefore, the Board could adopt regulations to require other items.

The Board directed that staff provide further information and suggested language for this item at the next meeting.

XVII. Technical Advisory Committees (TACs)

A. Board Assignments to TACs – No updates

B. Appointment of TAC Members

MOTION: Mr. Foley/Mr. Josephson moved to appoint Mr. Phil Ball to Mechanical TAC

VOTE: 9-0, motion carried.

C. Reports from the TACs

Mr. Foley indicated that he would hand over the Geology TAC to Erik Zinn as professional member liaison.

XVIII. Liaison Reports

A. ASBOG – No Updates

B. ABET – No Updates

C. NCEES

Mr. Tami indicated that there are two people running for NCEES treasurer; Dave Widemer from Pennsylvania and Dan Parker from Washington. He recommends that California support Dave Widemer, PLS from Pennsylvania.

MOTION: Mr. Tami/Mr. Foley moved to support Dave Widemer for NCEES Treasurer.

VOTE: 9-0, motion carried.

Mr. Foley indicated that in order for him to continue with NCEES once his term with the Board expires, he recommends the Board provide him with emeritus status. This will added to the May agenda.

D. Technical and Professional Societies

President Modugno would like to send a letter of appreciation to the professional organizations for their efforts and support to the Board.

XIX. President's Report/Board Member Activities

President Modugno thanked Ms. Bruning for her work for the Board and suggested that Board members contact her to make sure they have fulfilled their training requirements.

President Modugno added that the Board needs to create a subcommittee for the nomination and election of the President and Vice President of the Board at the May meeting. He stated that in the past, the subcommittee has been made up of past presidents. Mr. Foley and Mr. Tami volunteered to be on the subcommittee.

President Modugno also announced that the Board, in Closed Session, had decided to designate one of the disciplinary decisions as a Precedential

Decision. Mr. Duke advised that he would present this matter, including an explanation of the process and meaning of Precedential Decisions, at the May Board meeting.

XX. Other Items Not Requiring Board Action

Date of Next Meeting: May 12 & 13, 2011, Sacramento, California [Board Meeting]

Mr. Foley indicated that he would like to order lapel pins with the Board seal for \$750 for 500 pins. The Board members' personal voluntary funds would be used to purchase these pins. Board members would have to contribute additional funds towards the cost and possibly include staff as well. These pins would be for Board members and future Board members or recognition of staff or other people for services to the Board.

Vice-President Silva would like the Strategic Plan to be a standard item under the Executive Officer's Report at future meetings.

Mr. Satorre suggested arranging a face-to-face meeting with the Governor.

Ms. Arnold announced that Dr. Hong Boem Rhee as new board member. The Board will formally welcome him at the next Board meeting.

XXI. Approval of Consent Items

(These items are before the Board for consent and will be approved with a single motion following the completion of Closed Session. Any item that a Board member wishes to discuss will be removed from the consent items and considered separately.)

Approval of the Minutes of the January 28, 2011 Board Meeting

MOTION: Mr. Silva/Mr. Foley moved to approve the Board minutes.

VOTE: 9-0, motion carried.

XXII. Adjourn

Meeting adjourned at 1:09 p.m.

PUBLIC PRESENT

Kim Kirchmeyer, Department of Consumer Affairs
Roger Hanlin, California Land Surveyors Association
Annette Lockhart, California Land Surveyors Association
Bob DeWitt, ACEC
Mark Smith, ACEC
Joan Al-Kazily, ASCE
Richard Markuson, ASCE
Curt Burfield, CalTrans
Steven Hao, CalTrans
Craig Copelan, PECG