MEETING OF THE BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

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

Friday, January 28, 2011

Board Members Present: Mike Modugno, President; Jerry Silva, Vice President; James Foley; David Luzuriaga; Philip Quartararo; Ray Satorre; Patrick Tami; Michael Trujillo; and Erik Zinn.

Board Members absent: Kim Blackseth; Carl Josephson; Paul Wilburn

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

I. Roll Call to Establish a Quorum

The teleconference meeting was called to order by President Mike Modugno at 9:45 a.m. Roll call was taken, and there was not a quorum.

It was also noted that members of the public were present at teleconference sites. Heba El-Guendy appeared at the office of Mr. Satorre, and Charles Nestle appeared at the office of Mr. Trujillo.

III. Public Comment

Heba El-Guendy requested assistance from the Board in her application process. She stated that she attended the Traffic Engineering examination in October 2010. She learned from the Board's website that the examination results had been mailed; however, she had not received her results in the mail. Therefore, she attempted contact several times and finally spoke with Christina Trujillo of the Board staff on January 19, 2011, wherein Ms. Trujillo referred her to the NCEES website. Ms. El-Guendy discovered that the NCEES does not publish state-specific examination results. Ms. Trujillo then checked her file and indicated she would send out a letter to Ms. El-Guendy the same day. Ms. El-Guendy received two letters on January 21, 2011. The first letter, dated January 7, 2011, indicated that she had passed the Traffic Engineering examination; however, the take-home examination was missing from her file.

Ms. El-Guendy was directed in the letter to return the take-home examination by January 21, the same day she had received the letter. The second letter notified Ms. El-Guendy that her application for the Civil Engineering examination for the April 2011 examination was not accepted because it was hand-written instead of type-written. She explained that she was continually shut out of the website; therefore, she printed the application form and filled it out by hand. She indicated that she submitted the application with all the requirements, including references for nine years of California experience, a copy of her Masters Degree in Civil Engineering, her NCEES registration, and the take-home examination.

Ms. El-Guendy indicated that she spoke with Ms. Bruning and requested to attend this meeting and left several messages for Joyce Hirano. She indicated that she received a call from Ms. Hirano while she was in route to the Board office on January 23, 2011, indicating it was not necessary for Ms. El-Guendy to visit the Board's office. Ms. Hirano indicated that she used another copy of her take-home examination and issued her Traffic Engineer license back-dated to January 7, 2011. Ms. El-Guendy stated that Ms. Hirano also told her there was a possibility for her to attend the Civil Engineering examination in April 2011, and that she would send her an e-mail on the following Monday or Tuesday. Ms. El-Guendy stated that she received an e-mail from Ms. Hirano on Wednesday indicating that she would not be able to take the April 2011 examination because the application was hand-written.

Ms. El-Guendy mentioned that she did previously submit a type-written application for the April 2010 examination. She had received a letter inquiring about information on the reference letters, for which she responded. She stated she did not receive a response and decided to wait and submit an application for the April 2011 examination with a letter requesting that the evaluator let her know if anything was missing.

Ms. El-Guendy indicated that despite all her efforts, her file was not checked until she contacted the office on January 19. She does not believe it should be this difficult to get to the examination; therefore, she is seeking help from the Board.

President Modugno suggested that staff meet with Ms. El-Guendy face-to-face to lay out the final requirements of what she needs to do to take whichever examination for which she qualifies.

It was noted that Mr. Silva joined the meeting at 9:55 a.m., and a quorum was now established.

Mr. Foley requested that someone look into what went wrong in this situation.

Mr. Tami indicated that Ms. Hirano was in attendance at the meeting and inquired with Ms. El-Guendy if she would like to address the situation in the public forum. Ms. El-Guendy indicated that she overnighted a type-written

application to Ms. Hirano prior to her decision to deny her for the April examination. She stated she would be happy to approach the situation either now or in a separate meeting. She noted that she was not attempting to complain about staff but was simply looking for a resolution. Mr. Tami clarified that Ms. El-Guendy was comfortable with proceeding in front of the Board.

Ms. Hirano stated that she had explained in her e-mail that she had indeed issued Ms. El-Guendy's Traffic Engineer license backdated to January 7, 2011, because staff found the take-home examination she submitted with her Civil Engineering application. She further stated in regards to Ms. El-Guendy's application for the Civil Engineering examination that hand-written applications are not accepted from anyone. Ms. Hirano stated that Ms. El-Guendy did submit a type-written application after she received a letter requesting one.

Mr. Foley stated that he seemed as if the Board's system had failed somewhere. He stated that Ms. El-Guendy paid her fees twice, and he inquired as to what had happened with the first application for the April 2010 examination. Ms. Hirano responded that the first application was type-written, but it was deemed incomplete. She stated that she did not have the file with her but believed Ms. El-Guendy's response was either not submitted in a timely manner or did not provide sufficient information to complete her application. Ms. Hirano stated the second application needed to be type-written because it is considered to be a new application. She stated that if one hand-written application is going to be accepted, then the Board will need to allow all applicants to submit hand-written applications.

President Modugno asked if the application has now been completed and if Ms. El-Guendy was going to be able to sit for the October 2011 examination. Ms. Hirano indicated the application is complete and will be reviewed for October; however, staff is in the process of completing the review of the applications for the April 2011 examination.

Ms. El-Guendy stated that she had requested that the letters she received be circulated to the Board members; however, she understood that there may have been some legal issue with doing that. She stated that Ms. Hirano told her during a phone conversation that there was a possibility that she would still be able to take the April examination but directed her to return home instead of bringing her type-written application to the office. She stated that she would have submitted a type-written application if she had been notified in December that she needed to do so, just as she responded promptly to the letter she received January 21, 2011. She reiterated that this is not the first time she has attempted to take the examination. She asked that her situation be considered.

Ms. Hirano indicated that Ms. El-Guendy's application came in with all of the applications that were submitted right at the examination application cut-off date; therefore, considering the volume of applications received, there was no way to

notify her any sooner about the deficiency. She stated the applications are processed in the order they are received.

President Modugno requested Ms. Hirano go back to the original application and inform Ms. El-Guendy as to what was missing from her application for the April 2010 examination. He stated that Ms. El-Guendy would need to wait for the October 2011 examination. He said the Board would take into consideration any areas where the process was flawed, and he thanked her for bringing this matter to the attention of the Board.

Frank Pierce, Agricultural Engineer and Registered Environmental Assessor, appeared before the Board, representing the California Society for Professional Engineers. He stated that as a result of how the California Green Building Standards Code (Code) is being implemented, Professional Engineers have not been allowed to work on buildings. Instead, they are required to obtain a separate certification, which may diminish the motivation for individuals to seek a Professional Engineering license. The Code sets targets for energy efficiency, water consumption, water conservation, dual plumbing systems for potable, recyclable water, diversion of construction waste, resource efficiency and the environment. The Code passed in 2008 and was to be implemented January 2011 through local enforcement agencies. The implementation of these regulations passed by local governments is requiring work be done by those with various credentials. Professional Engineers are not qualified without the additional credentials. Mr. Pierce requested the Board review this with consideration that licensed Professional Engineers should be able to work without additional certifications.

President Modugno inquired if this is a LEED certification or a separate certification. Mr. Pierce responded that this is in reference to the California Code of Regulations, Title 24, Part 11, California Green Building Standards Code. President Modugno agreed the Board should look into this matter and requested input from the other members and staff. Ms. Eissler indicated this is the first time she had heard of this additional certification requirement, and that the Enforcement Unit had not received any inquiries from Professional Engineers who were being told they could not practice without additional certifications. She stated that if a local agency is trying to restrict a Professional Engineer's practice, the Board can address that with the agency due to a law that prohibits that. However, if another state agency is enforcing this, the Board has less jurisdictional authority. She said the staff can look into this and report back to the Board. Ms. Eissler asked Mr. Pierce which specific sections of the California Green Building Standards Code required the certifications. Mr. Pierce responded that Title 24 required them.

Mr. Pierce indicated that he is also a member of the City of Salinas Business Development Task Force. The fact that the City of Salinas is applying this was discussed at one their task force meetings

President Modugno stated that this sounds like a step to making California less productive, which is not where the state wants to go. Mr. Tami stated that the presentation given at the November Board meeting discussed the California Green Building Standards Code, wherein similar questions came up. He also asked that staff look into what is happening in other agencies as a follow-up. The Board asked staff to place it on the agenda for the next Board meeting.

Mr. Pierce also mentioned that Salinas Valley is facing extreme changes in the requirements for farm run-off and testing. He said he is finding that the technical side is not being understood by the Board. He indicated that he cannot use logic engineering science the way things are structured.

Bob DeWitt, representing ACEC California, stated that one of their member's Civil Engineer employee has been in contact with the State Water Resources Control Board regarding the preparation of storm water pollution control plans. After September 2011, registered engineers will no longer be able to provide storm water pollution control plans without getting an additional certification. ACEC California is quite concerned about this and will discuss this at their Board of Directors meeting next week in Sacramento. He suggested that this issue, along with the one brought forward by Mr. Pierce, be reviewed by the Civil Engineering Technical Advisory Committee for recommendation to the Board.

President Modugno requested that Mr. Pierce and Mr. DeWitt submit a written request to the Board to provide a basis for review. Mr. Pierce indicated he submitted a copy of his write-up to Ms. Bruning (see Attachment 1).

It was noted that Mr. Quartararo joined the meeting at 10:12 a.m.

Roll call was taken a second time to ensure a quorum was still established.

II. Introduction of New Members of the Board

President Modugno introduced new Board Member Erik Zinn. Mr. Zinn explained that he is a Professional Geologist and Certified Engineering Geologist and has been practicing out of Santa Cruz for 20 years. He also stated that he has owned his own consulting firm for 11 years. He said that his work varies from residential to water tanks to multi-story buildings, and he is looking forward to serving on the Board. The Board welcomed Mr. Zinn and shared that there has been much anticipation of his arrival as the first geologist member.

President Modugno indicated that Carl Josephson was recently appointed to the Structural Engineer position of the Board. Mr. Josephson had a calendar conflict with this meeting prior to his appointment; therefore, the Board will formally welcome him at the next Board meeting.

III. DCA Director Updates

Paul Riches, Department of Consumer Affairs (DCA) Deputy Director of Enforcement and Compliance, appeared on behalf of Director Brian Stiger.

Mr. Riches stated that Governor Brown was sworn in January 3, 2011, and the State has been in the full-speed transition since then. Appointments have been made at a slow pace. Mr. Stiger has been asked to remain as the Director of DCA and continue on with the Department's agenda until further notice. Mr. Riches indicated the number one agenda item for DCA for the past year and a half has been the Consumer Protection Enforcement Initiative (CPEI), which is a Department-wide effort to improve enforcement processes and shorten enforcement timelines. Governor Brown's administration has directed DCA to continue with the hiring freeze set in place by Governor Schwarzenegger. Mr. Riches indicated DCA will work to pursue exceptions to fill high-priority and critical positions.

Mr. Riches commented on the most recent Executive Order directing state government to reduce the number of cell phones by 50 percent. He indicated that DCA asked all programs to produce a reduction plan by the end of January. DCA has received those plans and has begun collecting the excess cell phones. Mr. Riches thanked this Board for its cooperation and work on implementing the order by reducing the number of cell phones staff use by 80 percent.

Mr. Riches indicated that DCA hopes to be publishing the second set of Department-wide performance measures for the CPEI next week. In the past year, DCA developed a set of performance measures to evaluate key enforcement performance metrics that all DCA programs are reporting on a quarterly basis. He stated that consistent metrics is essential to the ongoing improvement process and this is the first time all the 30 – 40 different DCA programs have used the same standard metrics. He stated that DCA urges all the Boards to look at their numbers, which are available on the website, as a key point of contact with the program to see its progress. DCA's goal for all programs is to reach an average case age of 18 months or less.

Mr. Riches stated another part of CPEI is to look at the regulatory tool kit that all the boards have. Some boards have found new approaches to solving their enforcement processes to make them work more effectively. DCA sponsored legislation last year in an effort to bring standard tools to all programs. Although that legislation was not successful, approximately half of the tools that were included in that bill can be adopted by regulation and do not require a statutory change. DCA urges each board to look at the list and determine which tools would be appropriate to assist the program to run more efficiently and effectively. DCA has also put together model paperwork for the rulemaking process. As one tool each board can put into use, Mr. Riches discussed the advantages of delegating authority for stipulations for voluntary surrender or revocation of a

license and default decisions to be adopted by the Executive Officer. By delegating the authority to the Executive Officer, the timeframes can be shortened significantly, as well as allowing the board members to devote their time to the more difficult judgment calls.

He indicated that DCA has put together a data collection process wherein each program submits a set of uniform statistics on a monthly basis. He again urged the Board to look at the statistics being submitted as it provides a snapshot of what is happening in key elements of the program.

Mr. Riches discussed another practice, the mail ballot process, known to save time in the enforcement process. He stated that he was pleased to see the Board discussed that option at a recent meeting and decided to implement its use on decisions where needed between meetings to ensure expeditious handling of time-sensitive cases. Mr. Riches indicated that DCA has developed a secure electronic mail balloting system that can be provided to this program. This system allows board members to access a secure e-mail system and cast their ballots and review documents electronically. The electronic mail ballot system allows the members the benefit of the mail ballot process while making it time efficient for the staff.

Mr. Riches indicated that DCA is making efforts to increase transparency to the public. DCA encourages all boards to webcast their board meetings to allow the public to participate in a more effective way. DCA's Public Affairs office can provide webcasting resources to enable the boards to participate in these efforts. He added that publishing the board meeting agenda materials on the website 10 days in advance of the meetings provides the public an opportunity to comment in a relevant manner based on the information provided.

He stated another step DCA is taking is building a new licensing data system. The current system is made up of two antiquated elements: Consumer Affairs System (CAS) was implemented in the mid-1980's, and the Applicant Tracking System (ATS) was deployed in the early 1990's. Many challenges are created by trying to use the two in concert with each other. The new system is titled "BreEZe" and is a customizable off-the-shelf product that will have modern databases that are fully web-enabled and the ability to conduct transactions online and pull data for performance metrics. The final request for proposal was published in December, and it is anticipated DCA will receive bids in mid-February. The target date for contract reward is early August. The budget authority was passed last year as part of CPEI. The target for deployment at the first boards is early 2012. He indicated that Debbie Balaam is the Chief Information Officer overseeing this process. DCA encourages the Board to have Ms. Balaam provide a presentation about BreEZe at one of its meetings.

DCA has encountered a problem with its use of expert consultants, commonly referred to as Subject Matter Experts or SMEs or Technical Experts. In

reviewing the way it pays these expert consultants, DCA has seen a need to shift its business practice in order to come into full compliance. Instead of being paid on an invoice basis as has been done in the past, the SMEs will need to be under individual contract with the Department. This will be phased in over a transitional period through an expedited contract process. DCA recognizes that SMEs are essential to the business processes of the Boards; however, it is also essential that these individuals be brought under contract to normalize the business relationships.

Mr. Riches also indicated that DCA is putting a renewal payment process into place. To date, all applications had to be accompanied by a payment other than credit card. A pilot project started this month with one board for them to accept credit card payments on renewal applications. This Board is one of eight that have requested to be part of the pilot project. The process is slow to start, taking two to three months per board for implementation. There will be a charge of a 2% credit card fee that the boards will have to pay for those transactions; however, it is hoped that both the program staff and applicants find this to be a convenient way to expedite the process.

The Sunset Review process is underway, and this Board is scheduled for a formal hearing on March 21, 2011. The Legislature is going through a transition with new members; therefore, there have been delays in the process. DCA is going to partner with all the boards and bureaus up for Sunset Review and go forward together. He stated that a big focus for the review will be enforcement. The overall time to discipline a licensee at this Board is over 60 months, which is the longest of all the boards under DCA. The steps the Board is taking to reduce processing time, such as utilizing the mail ballot process and looking at regulations to speed the process, will serve the Board well in the Sunset Review process.

Mr. Riches indicated DCA is working with the Board on a contract for computer-based testing. This will aid the Board in serving its applicants more efficiently, timely, and cost-effectively.

He closed with information regarding the restriction of out-of-state travel. DCA recognizes that having a voice in national forums is valuable; however, the state is in an extraordinary fiscal situation. Out-of-state travel is being limited to criterion which includes saving lives, saving money, or obtaining funds.

Ms. Arnold inquired if the Medical Board is sponsoring legislation regarding the contracts for the expert consultants. Mr. Riches indicated that the draft language that he had seen was specific to the Medical Board but would serve as a model for any board. He added that DCA would like to have a Department-wide solution; however, DCA does not have any such language approved at this time.

Mr. Foley recognized all the positive information that Mr. Riches shared. He inquired about the Board's budget request for additional funding for the Attorney General's (AG's) Office. He stated that enforcement needs funding and personnel to perform well, and he does not think DCA is advocating for the Board's needs. Mr. Riches agreed that resources are a key component to having adequate enforcement performance. He stated that the operating principles of CPEI recognize three issues, the first being genuine resources needs. He stated DCA has worked with all the programs to obtain the resources they need to improve; however, the budget process is challenging. DCA is working with the Board on the current year and next fiscal year budget funding issues. Another component to addressing the performance issue is the database infrastructure, which is why BreEZe is part of CPEI. The final component is steps that can be taken to improve the program, including policies and procedures. He stated there are legal tools and other opportunities to perform better within the resources that are available.

Mr. Tami inquired about out-of-state travel. He stated that there is an upcoming meeting of all the Executive Officers from the licensure boards for engineering and land surveying from all of the other states and territories. The Board pays into an organization that holds those meetings. A portion of those dues are used for examination and also for the travel of the Executive Officer and Board President to attend those meetings. He said that California is unrepresented at an organization that writes and develops its examinations as well as policies and procedures California is required to adhere to. He also pointed out that California is the number one user of these examinations. Mr. Riches indicated that he understands the frustration. President Modugno mentioned the problems the Board encountered due to a lost examination and stated that the relationships the Board had through its members saved the Board significant funds. He indicated that lack of attendance at these meetings can have financial implications to the Board by lack of representation. He reiterated that there is no cost to the Board for this travel since it was already expended to the national organization through dues. Mr. Riches stated that he would take the matter back to Director Stiger and suggested the Board submit written comments and work with peers in other states to have its concerns heard at national meetings. Ms. Arnold mentioned that there is an exemption request at DCA for a meeting in May for one the Board members to attend. Mr. Riches again stated he would take the strength and feeling of the Board in this matter back to the Department.

The Board took a short recess before convening in closed session.

V. Closed Session – 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)]

A. <u>Rodolfo Ventura Dimalanta</u> v. <u>Board for Professional Engineers and Land Surveyors</u>, Alameda County Superior Court Case No. RG10513640.

B. Examinations

VI. Open Session to Announce the Results of Closed Session

Ms. Eissler reported that the Board, in closed session, discussed pending litigation as noticed, rejected one and adopted four stipulations, and voted on a petition for reconsideration.

IX. Consideration of Rulemaking Proposals, as follows:

- **Proposed Amendments to Title 16, California Code of Regulations Section 407 – Fees (Possible Action)**

  Ms. Arnold indicated that a rulemaking package is being started to make changes to the fees, which enable the Board to move forward to using NCEES to administer the examinations. Ms. Thompson referred to the issue paper she prepared, which was disseminated to the Board via e-mail and copies were made available to the public on the Board's website and at the meeting. She stated that staff has submitted a Spring Finance Letter to cover the fees that NCEES will charge when it begins administering the national examinations effective with the October 2011 examinations. The Board is proposing regulations to change the fees so that applicants will pay NCEES directly for the national examination effective with the 2012 examinations. Under the proposal, the applicants will pay an application processing fee to the Board, and they will pay NCEES directly for the examination. The applicants will still pay state-specific examination fees directly to the Board. Ms. Thompson explained how the staff arrived at the amount of the fees, as outlined in the issue paper. She requested approval of the proposed fees by the Board for staff to submit in a regulatory package. She stated the plan is to have the fees and regulations approved by March or April 2012.

  Mr. Pierce inquired how the new fee structure would affect the title act professions. Ms. Thompson indicated that the title act professions would be covered under Section 407 (b)(3) as a professional engineer.

  Craig Copelan, Professional Engineers of California Government, asked for clarification of the additional fees that would be charged by NCEES. Ms. Thompson reiterated that applicants will pay the Board $110 application review fee, and they will pay national examination fees directly to NCEES. She provided an example of the fees a mechanical engineering candidate would pay to NCEES for a national examination: $10 book fee, $100 examination administration fee, and $155 grading fee. The fees including application and examination total $375. The examination fees vary by examination. The fees for Structural Engineering examinations are the highest at $400 each.

  Mr. Pierce suggested the regulation include a statement indicating that the fees paid by the title act professions that are not specifically listed are paid directly to the national organization. President Modugno indicated that it

sounded like a good proposal to offer some clarity in that area. Ms. Thompson indicated that making changes now will affect the timeline for putting the rulemaking package through.

Mr. Foley cautioned that making language too specific can cause the need to amend the language more frequently. The more general the language is kept the better off the Board will be. Mr. Riches indicated that regulations proposing fee changes are the most closely scrutinized. He stated that the fewer issues that are raised in changes to fee sections, the more likely the Board is to succeed and not encounter additional problems down the line. He suggested that it is better to explain the regulations in publications rather than in the text of the regulation. Mr. Pierce retracted his suggestion.

Ms. Thompson concluded by stating the Board's Acts do include language that specify it can contract with an outside public or private entity to administer the examination as well as collect the fees. She added that the new process will likely expedite the scheduling of examination administration with NCEES and save the Board $1.6 million.

MOTION: Mr. Tami/Mr. Luzuriaga moved to go forward with the rulemaking proposal as presented.

Mr. Foley inquired as to why the Board needed to go through the rulemaking process to designate the fees if the Acts already included the authority to work with an outside vendor. He suggested the Board eliminate the fees applicable to this and pay the fees as they fluctuate. Mr. Duke responded that the fees that will be paid directly to NCEES are strictly for the examination; the other fees that are designated are the Board's processing fees for reviewing applications. Mr. Duke explained that the Board is required by law to specify in regulations the exact amount of the fees it will collect for various things, such as renewal fees and application fees. Ms. Thompson indicated that the Board cannot keep the fees at the current $275 since the Board will no longer be collecting the fees to pay to NCEES.

Ms. Bruning took the vote by roll call.

VOTE: 8-0-1, motion carried. Mr. Foley abstained.

Ms. Thompson mentioned that as a result of the reduction in the application fee, the licensure and renewal fees will also be going down.

X. Approval of Delinquent Reinstatements (Possible Action)

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

CIVIL

MCMURTRY, RICHARD KEITH

Reinstate applicant's Civil license once he/she takes and passes the seismic principles examination, the engineering surveying examination, and the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

ELECTRICAL

AUMAN, HARRY JAMES

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

MECHANICAL

BROWN, JACKSON ARNOLD

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

FARAMARZI, RAMIN T

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

JOHNSON, SCOTT HOWARD

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

LANDON, FRANK LAWSON

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

WELCH, PATRICK MICHAEL

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

Ms. Bruning took the vote by roll call.

VOTE: 9-0, motion carried.

XIII. Technical Advisory Committees (TACs) (Possible Action)

B. Appointment of TAC Members (Possible Action)

Ms. Christ recommended the Board appoint Williston Warren to the Structural Engineering Technical Advisory Committee. She stated that Mr. Warren has

a broad range of technical competencies and his experience would be important to the TAC

MOTION: Mr. Tami/Mr. Satorre moved to appoint Williston Warren to the Structural Engineering Technical Advisory Committee.

Ms. Bruning took the vote by roll call.

VOTE: 9-0, motion carried.

XVII. Approval of Consent Items (Possible Action)
(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.)
A. Approval of the Minutes of the November 17 & 18, 2010, Board Meeting
B. Approval of the Minutes of the December 15, 2010, Board Meeting

MOTION: Mr. Satorre /Mr. Tami moved to approve the Board minutes on the consent agenda.

Ms. Bruning took the vote by roll call.

VOTE: 9-0, motion carried.

XVIII. Consideration of Amendments to the Minutes of the August 11 & 12, 2010 Board Meeting. (Possible Action)
Ms. Eissler explained that the Board office had become aware after the November 18, 2010, Board meeting that a member of the public, Keivan Salehzadeh, had submitted an e-mail that day requesting that his remarks as listed in the August 11 & 12, 2010, Board meeting minutes be modified. Since the Board already adopted the August minutes, the Board would need to vote to amend those minutes to change his comments.

Mr. Silva inquired if the requested modification is accurate. Ms. Bruning responded that she had listened back to the recording and determined that Mr. Salehzadeh had made the statements that he requested be added.

MOTION: Mr. Tami/Mr. Silva moved to approve the amended minutes of the August 11 & 12, 2010, Board Meeting.

Ms. Bruning took the vote by roll call.

VOTE: 9-0, motion carried.

It was noted that Mr. Silva and Mr. Luzuriaga left the meeting at 12:25 p.m., and there was no longer a quorum.

VII. Recruitment/Appointment of a New Executive Officer (Possible Action)

Jennifer Willis, DCA Personnel Officer, introduced herself and presented information regarding the Executive Officer position. She stated that this is an exempt position and serves at the pleasure of the Board. The Board has exercised its right to appoint an Acting Executive Officer and has requested an Interim Executive Officer. For clarification, an Acting Executive Officer is unpaid, whereas an Interim Executive Officer is paid. The state is in a hiring freeze situation and in order to provide payment, a hiring freeze exemption would need to be approved by the Governor's office. DCA resubmitted the hiring freeze exemption request to the State and Consumer Services Agency (SCSA) on Wednesday and are awaiting a decision. If approved by SCSA, the request would be submitted to the Governor's Office for a final decision.

Ms. Willis presented an overview of the recruitment and hiring process for the permanent Executive Officer. She distributed a handout (see Attachment 2), which will be provided in electronic format to the members at remote locations after the meeting. She stated that the hiring process takes four to six months to complete depending on the availability of the Board members and the candidates. DCA recommends that the Board identify two Board members to serve on a selection committee. The committee would work with the DCA Office of Human Resources (OHR) and the Deputy Director of Board Relations, review and finalize the duty statement to provide a foundation for the recruitment, identify the desirable qualifications and leadership competencies, develop screening criteria, and advertise the position. Either the committee or OHR can conduct the pre-screening of applications and the reference checks. The final screening and initial interviews will be conducted by the committee. The final interviews of the top two to three candidates are conducted by a quorum of the Board in closed session meeting conforming to the public notice requirements for all Board meetings. The Board must vote to choose the final candidate for the position and determine the candidate's appropriate salary within the current salary range during closed session. The Board would subsequently announce in open session that a selection has been made; however, identification of the candidate should wait until the candidate has been notified and has accepted the position. Administration of the Oath of Office and announcement of the final appointment would take place at a future date during a public meeting. Ms. Willis indicated it up to the Board as to what process they choose to take. The Board can choose to forego this process and simply make an appointment.

President Modugno noted that Ms. Arnold has been doing a great job and the Board wants to reward her for her efforts by appointing and paying her as the Interim Executive Officer, rather than just as the Acting Executive Officer. He stated that the Board would encounter a net savings as her Assistant Executive Officer position goes unfilled during the interim.

Mr. Foley indicated that he and Mr. Blackseth served on the selection committee to recruit for the position in the past. He indicated the previous position description is still available and should not warrant much updating. He stated that they went through the State Personnel Board to advertise the position for the minimum amount of time, which resulted in 10 candidates. The committee narrowed the candidates to three final candidates for the Board to interview. The process took a total of approximately four to six weeks, versus the proposed four to six months. Mr. Foley suggested the Board reduce the time and avoid a nation-wide search.

President Modugno requested confirmation that Mr. Wilburn and Mr. Blackseth were to serve on the selection committee. Ms. Eissler stated that her understanding was that the Board had appointed Mr. Foley and Mr. Wilburn to the committee at the August Board meeting; however, at the December Board meeting, Mr. Foley stepped down due to his impending term expiration and that President Modugno intended to ask Mr. Blackseth to serve on the committee. President Modugno indicated that Mr. Blackseth accepted the appointment to the committee. He requested that Mr. Foley send the position description and other pertinent information from the prior selection process to the new committee. Ms. Willis indicated that her office assisted with the process previously and has access to that information as well. Ms. Eissler stated that she also has copies of the previous job description and duty statement. President Modugno indicated he will confirm through staff that Mr. Wilburn and Mr. Blackseth will serve on the committee. He stated that he will serve as a back-up in case one of the members cannot participate. Ms. Willis indicated Margo Cooper of her office will be working with the selection committee.

Mr. Foley suggested that OHR advertise the position immediately for the minimum required amount of time and, if necessary, extend the final filing date. Ms. Willis indicated she would be glad to work with staff and the committee to initiate the process.

Mr. Tami indicated that the salary range for the Executive Officer is lower than that of some of the Board's licensed staff whom the position supervises. At one time, the Board investigated raising the Executive Officer pay range. He inquired if there was a way to look at quickly raising the pay range to attract licensed individuals who do not want to take a salary cut. Ms. Willis responded that although it is possible, the salaries are set through the Department of Personnel Administration and the Governor's Office. Depending on the candidate, an exception could be requested, but they are rarely granted. She suggested the Board move forward with the recruitment process, see who the candidates are, and then revisit the issue when the Board makes a decision or has options available.

Mr. Tami asked if the Board would have to wait for a hiring freeze exemption once a candidate is selected. Ms. Willis indicated that the current exemption

request that has been submitted for the interim position will apply to the permanent position as well, if approved. She indicated there is no way of knowing how long the exemption request decision will take.

The Board thanked Ms. Willis for her presentation.

VIII. Executive Officer's Report

A. Legislation

1. Legislative Proposals for 2011 (Possible Action)

Ms. Arnold stated that she drafted legislation as directed by the Board to make administering the state-specific California Structural Engineering Seismic examination permissive instead of mandatory. This would give the Board the option of administering the examination in addition to the 16-hour National Council Structural examination. She included documentation from NCEES stating that a quarter of the individuals writing the national examination are from California and that the examination covers the required items included on the state-specific examination. She indicated that she is hoping to meet with a legislator during the following week in hopes that they will carry the bill.

President Modugno inquired if this Board has someone evaluating the national examination to ensure it is covering the components required by California. Mr. Tami indicated that Board member Carl Josephson has been working on the examination. Mr. Foley stated that current SETAC member and former Board member Gregg Brandow has also been involved in the process.

2. Regulation Status Report

No report given.

B. Sunset Review 2010 (Possible Action)

Ms. Arnold stated that the Board is scheduled for its Sunset Review hearing on March 21, 2011. She indicated that Mr. Foley will be making the presentation and all Board members are welcome to attend. The Senate Business & Professions Committee staff is to provide the issues to be addressed, which has not been received yet. Ms. Arnold indicated that she, Mr. Foley, and Mr. Tami would be meeting with DCA in February to go over the issues.

President Modugno inquired as to when the next Sunset Review would take place. Ms. Arnold responded that the Board is reviewed every four years. President Modugno suggested that a newer Board member should attend and participate in the Sunset Review process so as to have continuity for the next review. Mr. Zinn indicated that he will be attending the hearing, especially in consideration of impending discussion of the merger of the former Board for

Geologists and Geophysicists and the Board for Professional Engineers and Land Surveyors.

C. Personnel

Ms. Arnold stated that the Examination Unit has filled a half-time position starting February 2, 2011. In addition, an individual in the Examination Unit moved from a half-time position to a full-time position. She indicated there is an AGPA vacancy in the Geologists and Geophysicists Program and two vacant Office Technician positions. She stated that under the current hiring freeze, the Board is restricted to hiring individuals from with DCA. Interviews have been scheduled for Tuesday.

D. Enforcement

Ms. Eissler referred to the statistics in the agenda packet. She indicated that staff is making some changes to assignments and duties within the unit to get a handle on the backlog of citations that need to be issued. Staff is working with the AG's Office; however, the funding for the AG's Office is diminishing. Therefore, staff is working with DCA to get approval for a current year deficiency to augment the fund for the AG line item.

E. Exams

1. Release of Examination Results – October 2010 (Possible Action)

Ms. Arnold indicated that she held a meeting with Jerry Carter and Pam Powell of NCEES at the Board office on January 5, 2011. She indicated that Mr. Tami, Mr. Moore, and Ms. Thompson attended the meeting, with President Modugno joining by telephone. She stated that it was a productive meeting wherein they discussed the examination process, the Spring Finance Letter submitted to DCA by the Board, and the contract amendment to hand the administration of the national examination over to NCEES in October. Mr. Carter and Ms. Powell stopped by Sacramento on their way to work on item writing for the 16-hour National Council Structural examination in San Diego.

Mr. Moore indicated the results from the October 2010 examination were released December 22, 2010, for the Fundamentals of Engineering and the Fundamentals of Land Surveying examinations. The results for the remainder of the examinations were released on January 7, 2011, which was three to five weeks ahead of schedule, with the exception of the California Structural Engineering Seismic examination, which was released earlier this week. He stated that a large majority of the staff worked diligently to make this happen.

Mr. Tami inquired about the statistics listed in the Year to Date column on page 26 of the agenda packet, suggesting that the numbers looked low. Ms. Thompson responded that the numbers reflect all applicants on a fiscal year basis from July 1 – December 31, 2010. In addition, Mr. Moore

clarified that the number represents the total number of applicants, not the number of examinations taken since some applicants take multiple examinations.

2. Status of April 2011 Examinations
Nothing to report.

F. Licensing
Statistical information was provided in the Board agenda packet.

G. Publications
Nothing to report.

H. Website
Ms. Arnold announced that Celina Calderone is now the Webmaster for the Board. Ms. Calderone is the former Board Liaison and will be returning to the capacity in the near future.

XI. Information Technology Updates (Possible Action)

- **On-Line Renewals/Credit Card Renewals (Possible Action)**
  Mr. Donelson reminded the Board that the Credit Card Renewal system is for existing licenses for renewal applications only and does not include new applications. He added that the system accepts payments without verifying the license and is merely taking money.

  Mr. Donelson indicated that the transaction fee will be $1 plus an estimated two percent of the transaction value for each process. The fees will be charged to the Board but will not be passed on to the applicant. He stated the processor is the same that the IRS is using. The Department of General Services negotiates the Master Service Agreements with the various credit card companies for all departments, which are being amended. He stated that there is fiscal impact that Ms. Thompson will address during her presentation. He stated that there is some question about whether the Board can afford to implement the new system right away or if it needs to wait until the new fiscal year starts in July.

  Mr. Foley indicated that the Board should have a resulting cost savings as a result of processing credit card payments.

  President Modugno asked if the Board is in line to be a part of the pilot program for the Credit Card Renewal system, and if that will transition into the BreEZe project. Mr. Donelson confirmed that the Board did request to be a part of both projects; however, the Board is at least two to three years out from being transitioned to BreEZe because it is not a healing arts board. The transition to the Credit Card Renewal system will be available in three to six months.

Ms. Thompson indicated that the number of renewal applications processed annually varies since licensees renew every two years; therefore, the number of licenses expiring changes from even years to odd years. Approximately 44,000 renewals are processed in one year and 50,000 in the next year. Therefore, the cost of the credit card renewal fees would not be charged to the Board every year for every licensee, and it is assumed that not every licensee will use the Credit Card Renewal system.

XII. Administration (Possible Action)

A. Fund Condition (Possible Action)

Ms. Thompson referred to the Fund Condition for the Board in the agenda packet. She stated the Professional Engineers and Land Surveyors Fund brought in $6,414,269, which is approximately $504,801 more than this time last year. This is a normal trend due to the renewal revenue cycle change every two years as previously explained. The Geologists and Geophysicists Fund brought in $552,246, which is a $43,978 reduction compared to the prior fiscal year's revenue at this time. She indicated that this is not a normal trend, and staff is working on adjusting the program's regulations, including an amendment to the application fees. The Fund is projected to go into a deficit in Fiscal Year 2011/12; however, the projected balance for the end of the current fiscal year is a savings of $439,000. The Board may need to utilize that balance in the next year until the regulations are approved to repair the structural imbalance.

Mr. Tami asked about the process for changing the budget. Ms. Thompson responded that to get more money into the operating budget, a Budget Change Proposal is submitted. In the case of the Geologists and Geophysicists Program, it is the Fund or savings account from which the budget is pulled that is an immediate issue. She indicated that the issue was included in the Sunset Review report.

B. FY 2010/11 Budget (Possible Action)

Ms. Thompson referred to the budget information on page 47 of the agenda packet. She stated that the Professional Engineers and Land Surveyors Fund has a projected deficit of $147,000 in the current budget, mostly due to the enforcement program. The Board is waiting for a response to the current year deficiency request to obtain additional funding for enforcement. Ms. Thompson indicated that if the deficiency request is not approved, the Board may be able to alternatively cover the funds by not going forward with the Credit Card Renewal project. In addition, there may be some examination savings in April 2011 since the examinee population is declining.

Ms. Thompson indicated the Geologists and Geophysicists Fund has a projected savings of $439,000, partially attributed to the hiring freeze and the Spring Finance augmentation the fund received.

C. FY 2011/12 Budget Change Proposals (Possible Action)

Ms. Thompson indicated that the Board requested Spring Finance Budget Change Proposals for Fiscal Year 2011/12 to address the October 2011 national examination administration costs and the enforcement program AG expenses.

XIII. Technical Advisory Committees (TACs) (Possible Action)

A. Board Assignments to TACs (Possible Action)

Nothing to report.

C. TAC Report (Possible Action)

Mr. Foley stated that the Geology and Geophysics TAC distributed assignments for review of the current statutes, regulations, and definitions. He indicated that the TAC also discussed the examinations and the need for recruiting SMEs.

Mr. Moore indicated that the Land Surveyor TAC established dates for possible meetings this year, which are tentatively set for April 22, July 22, and October 7.

Mr. Pierce stated that he submitted a resume for consideration of appointment to a TAC.

XIII. Liaison Reports (Possible Action)

A. ASBOG (Possible Action)

Nothing to report.

B. ABET (Possible Action)

Nothing to report.

C. NCEES (Possible Action)

Mr. Tami reported that he attended a land surveyor examination development meeting in Clemson, South Carolina. He indicated that the Western Zone meeting is coming up in Washington State. The annual meeting is in Rhode Island. Mr. Tami mentioned that as the Chair of the Uniform Procedures and Legislative Guidelines Committee, he is funded to attend these meetings.

Mr. Tami stated that the meeting with Jerry Carter and Pam Powell of NCEES went well. President Modugno commented that the meeting included negotiations to move forward with NCEES administering the examination in California. He inquired if NCEES is intending to audit the April examination. Mr. Moore responded that NCEES staff will be observing and assisting at the April examination to experience the logistics of administering to California's large examinee population. The Board will assist NCEES in the transfer in October by helping provide examination sites and anything else possible at

that time. The Board will continue to offer the state-specific examinations and will, therefore, be in close proximity to NCEES during the transition.

Mr. Tami indicated that NCEES is looking at holding examinations for the Engineer-In-Training and Land Surveyor-In-Training candidates at college campuses. Mr. Moore indicated that he has passed information along to NCEES regarding campuses that are willing to participate in this venture. He stated that any further suggestions for campuses can be brought to him and he would happy to provide that information to NCEES.

Mr. Foley reported that he will be attending the NCEES Advisory Committee on Council Activities meeting in San Antonio the week of February 3, 2011.

D. Technical and Professional Societies (Possible Action)

Ms. Eissler reported that she and Mr. Foley attended the dinner meeting of the North County Civil Engineers and Land Surveyors Association in San Diego this week. Mr. Foley indicated there was an extensive question and answer session following the meeting, the bulk of which focused on enforcement activities and the reporting requirements. Ms. Eissler and Mr. Foley agreed it was a successful endeavor.

XV. President's Report/Board Member Activities

President Modugno thanked Mr. Tami and Board staff for the success of the meeting with NCEES. He stated that the DCA phone conferences with the Board Presidents continue to be productive and informative.

President Modugno inquired of staff if the contracts with expert consultants were going to cause any problems. Ms. Eissler responded that staff is working on developing standard language. The new requirement will affect expert witnesses used by enforcement, the SMEs used for examination development, and licensees used to review applications. Staff are concerned about the fiscal impact and timing for contract approval. Ms. Arnold indicated that staff estimates 650 contracts will be required annually. Mr. Riches recommended the Board use multi-year contracts for the stable of experts the Board relies on. This would avoid the need to process contracts annually for the Board and the DCA Contracts Office. Ms. Arnold asked for clarification on contracting with state employees. Mr. Riches indicated there is an issue with state employees being paid twice. Mr. Moore stated that the state employees that work with the Examination Unit typically do not charge the hours they are working on the examinations as they are getting paid at their normal job during that time. They are reimbursed for travel expenses. He stated that Mr. Riches offered assistance in working with other agencies, such as CalTrans and Department of Water Resources, to try to establish a Memorandum of Understanding to facilitate that cooperation. Mr. Riches indicated that usually when two agencies involve themselves in a contractual relationship it is referred to as an Interagency Agreement or a Memorandum of Understanding. It is important to ensure all

agencies have access to the experts they need. DCA is committed to doing what they need to ensure the experts necessary are in place.

President Modugno reminded Board members to take the least expensive mode of transportation possible when traveling to Board meetings.

President Modugno indicated that he is continuously impressed with staff.

XVI. Other Items Not Requiring Board Action

- Date of Next Meeting: March 24 & 25, 2011, Sacramento, California [Strategic Planning and Board Meeting]
  Ms. Arnold indicated that the Board will next meet on March 24 and 25, 2011, for Strategic Planning and Board meetings. She reminded everyone that the Sunset Review hearing will be held during the same week.

XVII. Adjourn

The meeting adjourned at 1:30 p.m.

PUBLIC PRESENT

Brian Clifford, Department of Consumer Affairs
Heba El-Guendy (via teleconference)
Roger Hanlin, California Land Surveyors Association
Steve Hao, California Department of Transportation
Annette Lockhart, California Land Surveyors Association
Richard Markuson, American Society of Civil Engineers
Charles Nestle (via teleconference)
Frank D. Pierce, California Society of Professional Engineers
Paul Riches, Department of Consumer Affairs

MOTIONS – JANUARY 28, 2011 BOARD MEETING

MOTION: Mr. Tami/Mr. Luzuriaga moved to go forward with the rulemaking proposal as presented.

Ms. Bruning took the vote by roll call.

VOTE: 8-0-1, motion carried. Mr. Foley abstained.

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

CIVIL

MCMURTRY, RICHARD KEITH

Reinstate applicant's Civil license once he/she takes and passes the seismic principles examination, the engineering surveying examination, and the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

ELECTRICAL

AUMAN, HARRY JAMES

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

MECHANICAL

BROWN, JACKSON ARNOLD

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

FARAMARZI, RAMIN T

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

JOHNSON, SCOTT HOWARD

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

LANDON, FRANK LAWSON

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

WELCH, PATRICK MICHAEL

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

Ms. Bruning took the vote by roll call.

VOTE: 9-0, motion carried.

MOTION: Mr. Tami/Mr. Satorre moved to appoint Williston Warren to the Structural Engineering Technical Advisory Committee.

Ms. Bruning took the vote by roll call.

VOTE: 9-0, motion carried.

MOTION: Mr. Satorre /Mr. Tami moved to approve the Board minutes on the consent agenda.

Ms. Bruning took the vote by roll call.

VOTE: 9-0, motion carried.

MOTION: Mr. Tami/Mr. Silva moved to approve the amended minutes of the August 11 & 12, 2010 Board Meeting.

Ms. Bruning took the vote by roll call.

VOTE: 9-0, motion carried.

ACTION ITEMS – JANUARY 28, 2011 BOARD MEETING

Public Comment

The Board directed staff to look into the requirements of the new California Green Building Standards Code and report back at a future Board meeting.

DCA Director Update

Mr. Riches indicated that Debbie Balaam is the Chief Information Officer overseeing this process. DCA encourages the Board to have Ms. Balaam provide a presentation about BreEZe at one of its meetings.

Recruitment/Appointment of a New Executive Officer

President Modugno indicated he will confirm through staff that Mr. Wilburn and Mr. Blackseth will serve on the committee. He stated that he will serve as a back-up in case one of the members cannot participate. Ms. Willis indicated Margo Cooper of her office will be working with the selection committee.

Mr. Foley suggested that OHR advertise the position immediately for the minimum required amount of time, and if necessary, extend the final filing date. Ms. Willis indicated she would be glad to work with staff and the committee to initiate the process.