

MINUTES OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

Carpinteria Sanitary District, Boardroom
5300 Sixth Street
Carpinteria, CA 93013

Thursday, November 16, 2023, beginning at 9:00 a.m. and continuing
Friday, November 17, 2023, beginning at 9:00 a.m.

Thursday, November 16, 2023

Board Members Present:	President Michael Hartley; Vice-President Christina Wong; Fel Amistad; Alireza Asgari; Rossana, D'Antonio; Cristina Garcia; Coby King; Guillermo Martinez; Betsy Mathieson; Frank Ruffino; and Wilfredo Sanchez
Board Members Absent:	Fermin Villegas
Board Staff Present:	Ric Moore (Executive Officer); Tiffany Criswell (Enforcement Manager); Dawn Hall (Administrative Manager); Joshua Goodwin (Senior Registrar for Geology and Geophysics); Christopher Pirrone (Legal Counsel)

I. Roll Call to Establish a Quorum

President Hartley called the meeting to order at 9:02 a.m., and a quorum was established.

II. Pledge of Allegiance

Ms. Mathieson led everyone in the recitation of the Pledge of Allegiance.

III. Public Comment for Items Not on the Agenda

During Public Comment, former Board member Mike Modugno welcomed the Board to Carpinteria.

IV. Hearing on the Petition for Reduction or Modification of Probation of Robert G. Martinez

NOTE: This hearing was held on Thursday, November 16, 2023, at 9:00 a.m.

V. Closed Session – The Board met in Closed Session immediately following the Hearing on the Petition for Reduction or Modification of Probation to decide that matter, pursuant to Government Code Section 11126(c)(3).

VI. Administration

A. Fiscal Year 2023/24 Budget Report

Ms. Hall presented the Financial Report and noted the Revenue results on page 18 of the Board materials reflect an increase in Renewal Revenue of approximately \$1m over the prior like fiscal period (FY 21-22 FM3). There was some discussion as to what is driving the increase, and Ms. Hall suggested that it could be due to a change in licensee behavior as more licensees are renewing their licenses online and perhaps earlier. There is not yet enough data to be certain if this trend will continue, and Board staff will continue to closely monitor the revenues. Ms. Mathieson asked if Board staff are doing anything to reduce the printing costs, and Ms. Hall assured the Board that staff is actively working on ways to reduce printing costs.

VII. Enforcement

A. Enforcement Statistical Reports

1. Fiscal Year 2023/24 Update

Ms. Criswell presented the Enforcement statistics. Vice-President Wong inquired whether there were any statistics that outlined disciplinary action among license types. Ms. Criswell indicated that while this information is not readily available, if there is a specific request, they can extract the information.

During Public Comment, Eric Angstadt said he receives calls from land surveyors indicating that if a complaint is filed with the Board or third party, the surveyor or the engineer gets retaliated against which is a significant problem. He has been advised by others to not file a complaint because it will not get resolved.

Carl Josephson reported that the last paper and pencil Structural exam was administered a couple of weeks ago. There were 1,300 candidates, which was slightly less than expected. The first computer-based test will take place April 2024.

VIII. Exams/Licensing

No report given.

IX. Strategic Plan Discussion

A. DEI Supplemental Strategic Planning Process

Mr. Moore explained that the Governor's Executive Order directed state agencies and departments to take additional action to embed equity analysis and considerations related to diversity, equity, and inclusion (DEI) into its policies and practices. DCA's SOLID reached out to all boards and bureaus to include a supplemental questionnaire to stakeholders that will commence around January. They will then report back to the Board to see if changes should be made to any objectives or goals in the Strategic Plan as a result of the survey. Mr. Moore reviewed the questions and provided his thoughts.

X. Discussion regarding the Background of the Board's Actions Relating to the Structural Engineers Association of California's (SEAOC) "Significant Structures" Proposal from 2015 to Define the Type of Structures that are Required to be Exclusively Designed by Structural Engineers (Possible Action)

Mr. Moore explained that under the Professional Engineers Act, a licensed civil engineer can practice structural engineering and can obtain a second license as a "Structural Engineer" by demonstrating additional experience and examination. According to the PE Act, a structural engineer license simply gives authority to use the title "Structural Engineer," and no additional practice authority is conveyed under the PE Act. He further explained that there are other statutes outside the Business and Professions Code (the PE Act) that require a structural engineer license. The Education Code requires a structural engineer to design public schools and community colleges. The Health and Safety Code requires structural engineers to design the structural portion of hospitals. Schools and the associated Education Code falls under the authority of the Division of the State Architect; hospitals, and the associated Health and Safety Code falls under the authority of the Department of Health Care Access and Information. These statutes are not under the Board's jurisdiction, but the practice is. In the last 30 years, there have been no complaints against a civil engineer for doing structural engineering on a school or hospital. During the 2014-15 Sunset Review, the Structural Engineers Association of California, (SEAOC), approached the Board and the Sunset Committees during the hearing about their significant structures proposal. It would require a structural engineer, not just a civil engineer, to design certain types of structures referred to as significant structures. At that time, there were other states that enacted such laws and a few were in the process of reviewing. SEAOC wanted to include a section in the PE Act. The Board explained that they had not been formally approached by SEAOC at that time, and, therefore, the Board had not discussed or reviewed it. The Board had questions about the proposal and thought it was premature to include it in the Sunset legislation. The Board then offered to hold a joint meeting of the Civil Technical Advisory Committee and the Structural Technical Advisory Committee (TACs) at which SEAOC could make a presentation. The Sunset Committees then requested that the Board and the engineering profession engage in further discussion with the committees regarding the appropriateness of these proposed changes. This resulted in the Board agreeing to facilitate discussions between professions and associations regarding the SEAOC proposal and to provide an update to the Sunset Committees a year later. In July 2015, the Board held a joint meeting of the Civil and Structural TACs. SEAOC indicated that individuals already licensed as civil engineers would be allowed to continue performing structural engineering on significant structures with exceptions of schools and hospitals as is already in current law. The TACs asked if there has been an event that had led SEAOC to this proposal but at the time, there was no specific incident in California; however, SEAOC believes this would provide better public protection. Board Staff explained that it could be difficult to justify taking away a right to practice from a group such as civil engineers without there being an event to drive this action. The meeting concluded with SEAOC advising that they would continue discussions with

other professional associations and present their proposal to the Board at a later date. Subsequently, SEAOC advised the Board that they had made changes to the language based on comments from the TACs and were continuing discussions with professional associations before moving forward with any legislation. In February 2016, the Board sent a letter to the Sunset Committees advising them of what had occurred. The Board noted that it could not take a position on a proposal until it was introduced as legislation. The Board further explained that SEAOC was going to continue working on a proposal. SEAOC then advised that they had met with Governor Brown, who advised not to continue with the proposal as it would not go anywhere. Since then, there has not been any new request from SEAOC to review a new or existing proposal, and the topic was not reintroduced during the 2018-19 Sunset review.

During the discussion, Dr. Asgari stated he believes it is the right path.

During Public Comment, Carl Josephson, representing SEAOC, introduced Michael Parolini and Kelsey Parolini, who are structural engineers in San Luis Obispo. Mr. Josephson provided a history of structural engineering licensure and outlined what is considered a significant structure. In their daily work, he and Mr. Parolini see the problems that civil engineers overlook when it comes to designing structures. SEAOC has proposed language for legislation but do not have a sponsor yet and would like the Board to support this in concept. He is aware that the Board cannot take a position on legislation until it is introduced. The proposal is that people that can currently design significant structures, with the exception of schools and hospitals, be allowed to continue to do so and after whatever date is set, then those buildings will have to be designed by a licensed structural engineer.

During Public Comment, Mr. Parolini clarified that the intent is not that anyone doing structures as a civil engineer is incompetent.

Alan Escarda, representing PEEG, would like to see the difference between original proposal and how it stands now.

Mr. DeWitt, representing American Council of Engineering Companies (ACEC), indicated that it is not on their radar yet but may come into play once it is in legislation.

Mr. Moore advised the Board they should not take a position on anything that is not in written legislative form.

XI. Discussion of proposals from the American Council of Engineering Companies, California (ACEC-California) and California and Nevada Civil Engineers and Land Surveyors Association, Inc. (CELSA) to increase civil penalties for the unlicensed practice of land surveying, expanding Organizational Record requirements, strengthening Responsible Charge

statutes and holding entities that hire unlicensed surveyors liable for unlicensed practice (Possible Action)

Mr. Moore introduced Eric Angstadt, the executive secretary of California Civil Engineers and Land Surveyors Association (CELSA). Mr. Angstadt reviewed the roles and responsibilities of CELSA. He reported that the biggest threat currently in land surveying is a tremendous amount of unlicensed practice, and he sees it only growing.

Mr. King has been a big proponent of enforcing unlicensed practice. The problem in this area is defining harm and providing an example. He questioned how one can demonstrate the harm of these unlicensed people using sophisticated technology versus a licensed land surveyor. If this is going to be included in the Sunset recommendations, we will have to address and persuade legislators that there is a real harm.

President Hartley responded that unlicensed survey practice drives away legitimate businesses with licensees being able to practice. He sees harm in that business is being taken away from those who should be practicing. While Mr. King is sympathetic to the competitive pressures of unlicensed practice, he wants to know where the harm is.

Mr. Angstadt noted that they had changed their proposal regarding professional liability insurance to say that if the licensee has such insurance, they have to disclose it to the client, rather than requiring the licensee to have such insurance.

He also noted that most licensees will not file complaints because they are retaliated against and blackballed.

Mr. Angstadt stated that it is a confluence of many factors. Technology is driving the issue due to retailers selling what has traditionally been considered "survey equipment" to contractors and claiming that licensed land surveyors are unnecessary.

Mr. King stated that while he believes some of these ideas are good, they do not get to the fundamental issue that is facing the profession, which is that the technology does make it easy to get to 90% of what licensed land surveyors do, and no laws will change that. As these unlicensed cases work their way through the court system, the courts and the legislators will be less and less sympathetic to the argument that there is a harm to society. The Board has seen citations rejected because the Administrative Law Judge does not see the harm. The challenge is, if you are not showing concrete harm, the legislators and court system will not be interested.

Mr. Angstadt added that you are protecting the public from threat and harm, which only manifests itself when there is a disaster.

Mr. Moore explained that the two professional associations wrote a letter to the Sunset Committee chairs and also communicated with the Board. This is something that will likely be brought to the Board's attention by the committees. The Board also asked to have it on the agenda following the presentation of the letter at the October meeting for discussion. It is listed as a possible action item in case the Board should choose to take any action, not because the Board has to take an action. Mr. Moore reminded everyone that the Sunset bill is not a Board-sponsored bill; it is from the Committees and anyone can request items be included, at which point the Committees would decide whether or not to grant the request.

Mr. King asked Mr. Moore for staff's input. Mr. Moore noted that the issue of unlicensed practice is addressed in the Sunset Report. He referenced Business and Professions Code section 125.9 and noted that it sets the fine at \$5,000 for each inspection, investigation, or violation. If the proposal to increase the maximum amount of fines goes into any legislation, he predicts that all of the boards and bureaus within DCA, as well as their stakeholders, will have input. He also noted that unlicensed individuals typically do not pay the fine, but licensees do. Mr. Moore noted that the Board sponsored legislation last year to amend the sections relating to engineering and land surveying businesses to clarify that unlicensed individuals or businesses cannot offer engineering or land surveying services. He explained that staff is looking into various options related to further strengthening the laws relating to engineering and land surveying businesses.

Mr. Escarda noted that many of the items are very focused on the private sector but either would not really apply to individuals working for public agencies or would create an onerous burden for them.

Mr. Parolini, representing himself, commented that he has seen examples of problems caused on construction sites by unlicensed individuals trying to stake layouts. He also added that the Contractor's State Licensing Board (CLSB) website discloses bond and insurance information, whereas this information is not available for engineers or land surveyors, and the consumer has no way to know if he is protected. If you are offering services to the public, you should absolutely have some way to know if that person is going to protect your interests if they make a mistake.

Mr. Moore advised that he asked the NCEES Member Board Administrators if they have laws in their states that require licensees to disclose if they have professional liability insurance. He indicated that very few states require that.

XII. Review and Approval of the 2023-2024 Sunset Review Report of the Board (Possible Action)

Mr. Moore presented the 2023-2024 Sunset Review Report draft and advised Board Members that there will be a subsequent teleconference the afternoon of December 14, 2023, to approve and adopt the final report.

Section 1

Ms. Mathieson referenced the first paragraph and would prefer the entry regarding San Francisco's great fire to be referred to as San Francisco's 1906 earthquake and fire.

Section 2

Ms. Mathieson referenced page 18 and noted the paragraph that mentions that the Board's Examination Unit develops and administers examinations and suggested that it should specify state specific examinations. Mr. Moore explained that the Board has granted both NCEES and ASBOG approval to administer their examinations directly, but the section could be clarified, if necessary.

She also mentioned that the last sentence of the first paragraph needs to be clarified, It says that expenses related to this effort are directly allocated to project participants, but it does not address who the project participants are. Mr. Moore explained the participants are the ones who are actually utilizing BreEZe. Ms. Mathieson suggested saying, "allocated to the boards and commissions that have implemented BreEZe."

Section 3

Ms. Mathieson noted that on page 44, fourth paragraph down it says, "Furthermore, NCEES maintains an enforcement database that can be used by its member boards to communicate disciplinary actions for engineering and surveying licensees." She noted that ASBOG has a similar database now. Mr. Moore suggested adding that ASBOG has implemented a similar feature for their member boards.

Ms. Wong suggested subheadings may be helpful.

Ms. Mathieson pointed out that on page 2, second full paragraph of the addendum where it says, "Computer-based testing is utilized for all exams," appears to be nearly identical to what is on page one. It also goes for the 3rd, 4th, 5th, and 6th paragraphs as well.

Ms. D'Antonio suggested inserting dates of when changes occurred and what prompted the change.

Ms. Mathieson also noted that the first full paragraph on page three of the addendum has a sentence that reads, "The Geologist and Geophysics Act requires applicants to first obtain a degree with a major in geological sciences and does not include a pathway to licensure based solely on work experience." She pointed out that you do not have to have a degree in the major and coursework is acceptable. Mr. Moore noted the information appears in another section.

She also noted the last paragraph on the same page, references "Midwest" when it is in Arkansas, which is not considered Midwest. Mr. Moore recommended striking out Midwest.

In addition, the last paragraph on page four references, “in the chart above,” it should be “below.”

Section 4

Ms. Mathieson noted that on page 48, last paragraph it reads, “In addition to the investigation of complaints, the Enforcement Unit responds to all inquiries (telephone, email, and letter) related to the complaint process,” she believes that in the section on licensing, the registrars should also be given credit responding to inquiries.

Ms. Mathieson asked for clarification on the last paragraph before the table on page 49 where it references “sources.” Mr. Moore noted that the sources are listed in the previous paragraph.

Also, on page 54, the end of the first full paragraph, Ms. Mathieson referenced, “to fully gather sufficient evidence to support allegations.” She is not aware that the Board’s Enforcement Unit is looking for evidence to support allegations. Ms. Criswell explained that it is to support the complaint. Ms. Mathieson suggested using, “substantiate allegations.”

She also believes that the Expert Fee increase should be acknowledged.

Under the Cite and Fine heading on page 58 “when the investigation reveals that the unlicensed person violated the Board’s laws by committing acts that require licensure.” Ms. Mathieson recommends changing the language to, “performing or advertising services that require licensure.. Mr. Sanchez suggested, “performing or advertising services that require a license.”

Section 5

Ms. D’Antonio suggested that the Board should be doing more with social media such as LinkedIn, similar to what the Mississippi Board does. Mr. Moore reported that the Board is looking into expanding its social media presence. The Board currently utilizes Facebook and X (formerly known as Twitter).

Ms. Mathieson pointed out the sentence on page 63 that reads, “Webcasting is simply a static video recording” and add broadcast to that line.

Section 6

Ms. Mathieson believes that in the Board’s professions, it is not online practice, it is online advertising of services which has been causing most problems. Mr. Moore provided an example where a licensed practitioner will answer questions, which is considered practicing online. He believes it affects the Board in terms of advertising more than offering.

Section 7

Ms. D'Antonio asked if Computer Based Testing is a method to address inequities as they are now more accessible to candidates to take the exam at their convenience. Mr. Moore can consider including it, but the Board has always made the examinations accessible in terms of locations; there are definitely more locations now.

Ms. Mathieson noted that on page 70, first paragraph, "the application submittal and review process has generally trended in a positive direction." She suggested changing it to, "satisfaction with the application submittal and review process has generally trended in a positive direction." She believes a different style of chart would be more effective rather than a pie chart.

Section 8

Ms. Mathieson believes it is worth mentioning how smoothly and widely accepted the transition to Connect has gone.

Section 9

Vice-President Wong suggested mentioning that the Board meetings were conducted exclusively via WebEx, as this topic is specific to COVID-19.

Section 10

Mr. Moore reviewed the issues. In reference to Issue 5, "What is the Board doing to counteract unlicensed activity," Ms. D'Antonio suggested viewing education through social media. Mr. Moore indicated that while they can, unlicensed individuals usually do not subscribe to the Board's social media posts. Ms. D'Antonio specified LinkedIn as it is geared towards professionals.

Vice-President Wong suggested also mentioning the collaborations with the professional associations.

Ms. Mathieson noted that page 81, third paragraph, "It standardized fees for services for all regulated professions" suggested deleting "for services."

Section 11

Ms. Mathieson noted that it is missing the heading.

Mr. Moore reviewed the proposed new items.

Ms. Mathieson asked that the language, "Change the expiration date of the appointment terms of our Board Members from June 1 to June 30" be clarified to determine whether it is the end date or the expiration date of the term.

Mr. Moore reviewed the second new issue regarding continuing education. At this time, there is no action the Board is asking the Committees to take on this issue. As indicated, the Board has just begun looking into this issue but wanted to bring it to the Committees' attention. Should the Board choose to move forward with such a

program in the future following its in-depth study, the Board would seek legislative support at that time.

Mr. Moore reviewed the third new issue regarding experience in lieu of education to qualify for certification or licensure as a geologist-in-training, professional geologist, and professional geophysicist. Mr. Goodwin conducted outreach the day prior, and this topic was a concern. Mr. Moore reported that there may be a method to encourage more people to apply for licensure specifically, a geologist or a geologist-in-training, if the requirements were more consistent with professional engineers and land surveyors without dismissing the education requirements.

President Hartley asked if it was too late to add an issue and referenced that several years ago there was legislation that was labeled skilled training workforce and referenced that the workforce employee will be skilled and trained. The phrase "skilled and trained" can be problematic. Skill can be overcome by being a journeyman in a union or on the job training. Training is different in that you have to have gone through a union apprenticeship program. You can have a licensed professional land surveyor that is able to practice in their area of expertise but cannot work on a skilled training workforce required project. He believes it harms the public as it tells the licensees that, despite being licensed and having the skill but not having been trained through an apprenticeship program, you cannot work on a public works project.

Mr. Moore explained that it is possible to add another issue, but most likely, we do not have enough information to support it. It is more likely an issue for professional societies to address because it does not really relate to the Board's laws or functions. He suggested President Hartley email him more information within the next week, and he would consult with Ms. Eissler.

Vice-President Wong also suggested a new issue considering the number of citations that have been occurring with unlicensed activity. Mr. Moore suggested highlighting the existing unlicensed portion to get their attention instead of creating an entire new issue as unlicensed activity in not a new issue.

Mr. Moore reviewed the Complainant Satisfaction Survey topic and explained that when investigations are closed, a satisfaction survey is provided to the complainant. Very few ever respond, however, and those who do are usually unhappy. The Board receives very few responses, so it is difficult to gauge satisfaction statistically.

Coby King left at 4:30 p.m.

Section 12

Ms. Mathieson noted that it is missing the heading.

During Public Comment, Mr. Escarda asked if there would be a table of contents and a mission and vision statement. Mr. Moore noted that there would be a table of

contents, and the mission and vision statement is included in the Strategic Plan that will be included as an attachment.

XIII. Executive Officer's Report

A. Rulemaking Status Report

No report given.

B. Update on Board's Business Modernization Project

Mr. Moore reported that there were slight changes that will be included in the update of the winter release which will include the traffic, geotechnical, and structural applications. He is getting concerned as resources are getting stretched due to twice the number of boards and bureaus that are utilizing a version of Connect. The vendor is trying to accommodate demand.

C. 2024 Board Meeting Schedule (Possible Action)

Mr. Ruffino indicated that he is unavailable for the January, March, and May meetings. Mr. Moore recommended that Board members who have conflicts email him.

D. Personnel

The Board's Enforcement Unit is actively recruiting for an analyst.

E. ABET

Mr. Moore reported Ms. Wong and Natalie King, the Board's Staff Civil Engineer Registrar, attended ABET visits. Ms. Wong stated she enjoyed the experience. It helped her understand the educational component for the engineering programs.

F. Association of State Boards of Geology (ASBOG)

1. Report from 2023 Fall Annual Meeting

Board Member Mathieson and Mr. Goodwin both attended.

Ms. Mathieson participated in the Member Board Administrators Law Enforcement Session. She added that the cost savings that were revealed in the financial report were largely due to the computer-based testing conversion. There were some issues that arose when candidates held rulers up to the touch screen which would cause issues; however, most of the glitches were remedied for the fall examinations. One concern is that ASBOG's psychometrician is going to retire, and the Executive Officer is planning on going in a different direction.

Mr. Goodwin reported that Ms. Mathieson's presentation was excellent. He added that there was also a presentation on how geology enrollment is down across the nation.

G. National Council of Examiners for Engineering and Surveying (NCEES)

1. Request from Aaron Blaisdell, PLS Washington State Board Member, for 2024-26 Western Zone Vice President Nomination (Possible Action)

MOTION:	Vice-President Wong and Mr. Martinez move to nominate Aaron Blaisdell as NCEES Western Zone Vice-President.
VOTE:	10-0, Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
President Hartley	X				
Vice-President Wong	X				
Fel Amistad	X				
Alireza Asgari	X				
Rossana D'Antonio	X				
Cristina Garcia	X				
Coby King				X	
Guillermo Martinez	X				
Betsy Mathieson	X				
Frank Ruffino	X				
Wilfredo Sanchez	X				
Fermin Villegas				X	

H. Update on Outreach Efforts

President Hartley requested more outreach in reference to monument preservation.

XIV. President's Report/Board Member Activities

Ms. Mathieson reported on a field trip to northern Idaho during the ASBOG meeting.

XV. Approval of Meeting Minutes (Possible Action)

A. Approval of October 3, 2023, Board Meeting Minutes

The approval of the October minutes were postponed due to the need for clarification.

The Board recessed at 5:12 p.m.

Friday, November 17, 2023

Board Members Present:	President Michael Hartley; Vice-President Christina Wong; Fel Amistad; Alireza Asgari; Rossana, D'Antonio; Cristina Garcia; Guillermo Martinez; Betsy Mathieson; Frank Ruffino; and Wilfredo Sanchez
Board Members Absent:	Coby King and Fermin Villegas
Board Staff Present:	Ric Moore (Executive Officer); Tiffany Criswell (Enforcement Manager); Dawn Hall (Administrative Manager); Joshua Goodwin (Senior Registrar for Geology and Geophysics); Christopher Pirrone (Legal Counsel)

I. Roll Call to Establish a Quorum (Cont.)

President Hartley called the meeting to order at 9:01 a.m., and a quorum was established.

V. Closed Session (Cont.) – The Board met in Closed Session to discuss, as needed:

A. Deliberate on a Decision(s) to be Reached in a Proceeding(s) Required to be Conducted Pursuant to Chapter 5 (commencing with Section 11500), as Authorized by Government Code Section 11126(c)(3).

B. Confer with, or Receive Advice from, Its Legal Counsel Regarding Pending Litigation Pursuant to Government Code Section 11126(e)(1) and (2)(A), on the following matters:

1. Ryan Crownholm, et al. vs. Richard B. Moore, et al., United States District Court, Eastern District of California, Case No. 2:22-cv-01720-DAD-CKD
2. Roy Allen Olsen, et al. v. California Board of Professional Engineers, Land Surveyors and Geologists, et al., Sacramento County Superior Court. Case No. 34-2022-00328379

II. Adjourn

The meeting adjourned at 10:04 a.m.

PUBLIC PRESENT

Bob DeWitt, ACEC
Kelsey Parolini, SEAOC
Michael Parolini, SEAOC
Carl Josephson, SEAOC
Alan Escarda, PEGG