Board Meeting Minutes
November 14 & 15, 2002

Board for Professional Engineers and Land Surveyors
Hilton Los Angeles North/Glendale
100 West Glenoaks Blvd
Glendale, California 91202

Thursday, November 14, 2002

Board Members Present: Millicent Safran (President), Gregg Brandow (Vice-President), Arthur Duffy, David Chen, James Foley, David Fruchtman, Andrew Hopwood, Stephen Lazarian, Michael Welch, and Dale Wilson.

Board Members Absent: Kathryn Hoffman.

Board Staff Present: Cindi Christenson (Executive Officer), Gary Duke (Legal Counsel), Susan Ruff (Liaison Deputy Attorney General), Nancy Eissler (Attorney General Liaison Analyst), Cindy Morris-Hoppe (Executive Analyst), Debbie Thompson (Budget Analyst), Howard Brunner (Staff Land Surveyor Consultant).

Public Present: See Attached

1. Roll Call to Establish a Quorum
The meeting was called to order at 11:35 a.m. Roll call was taken, and a quorum was established.

2. Public Comment
There was no public comment on non-agenda items.

3. Closed Session
The Board went into closed session at 11:40 a.m.

4. Open Session to Announce the Results of Closed Session
Ms. Christenson reported that the Board adopted the results of the take-home examination for the candidates who had previously passed the 8-hour portion of the indicated examinations.

Ms. Christenson reported that the Board adopted the results of the examination appeals for the October 2001 Electrical Engineering Examination and the April 2002 Professional Land Surveyor Examination.

Ms. Eissler reported that the Board adopted the Proposed Decision, but reduced the penalty, regarding Gary L. Davis.

Ms. Christenson reported that the Board discussed pending litigation as noticed.

5a. Approval of the Minutes of the September 5 & 6, 2002, Board Meeting.

MOTION: Mr. Hopwood/Dr. Chen moved to approve the minutes of the September 5 & 6, 2002, Board Meeting.

VOTE: 10-0, motion carried.

5b. Approval of Candidates for Certification/Licensure. (Based on Examination Results, Including Successful Appeals, Adopted in Closed Session)

MOTION: Mr. Hopwood/Dr. Chen moved to approve candidates for licensure and certification based on examination results, including successful appeal results and take home examination results, approved in closed session.

VOTE: 10-0, motion carried.

6. Approval of Delinquent Reinstatements.

MOTION: Mr. Foley/Dr. Chen moved to approve the Delinquent Reinstatements as follows:

Civil

1. **David Forssen**
2. **Laurie Kozisek**
3. **Teng-yuan Shih**
4. **Ted Wittig**
   Reinstate applicant's civil license once he/she takes and passes the Special Civil Examinations, the Board's Laws and Rules Examination, and pays all required delinquent renewal fees.

5. **John Riley**
   Reinstate applicant's civil license once he takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

6. **Keith Taylor**
   Reinstate applicant's civil license one he takes and passes the NCEES Civil Engineering Examination, the Special Civil

Examinations, the Board's Laws and Rules Examination, and pays all required delinquent renewal fees.

Land Surveyor

1. **Gary Jack Cobb**
2. **Jerry Eugene Roe**
   Reinstate applicant's land surveyor license once he takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

VOTE: 10-0, motion carried.

7. Comity and Temporary Authorization Applications.

MOTION: Mr. Foley/Mr. Hopwood moved to approve the Comity applicants listed on handout of distributed at the Board meeting for licensure.

VOTE: 10-0, motion carried.

Ramon Riba, the applicant for temporary authorization, is scheduled to appear before the Board on Friday, November 15, 2002.

8. Examination/Qualifications

a. Changes to the Engineer-in-Training and Land Surveyor-in-Training Final Filing Dates (Possible Action)

MOTION: Mr. Hopwood/Dr. Chen moved to move the final filing date for the October EIT and LSIT examinations forward two weeks so that there will be a 9-week period between the final filing date and the examination date.

VOTE: 10-0, motion carried.

b. California State-Specific Professional Land Surveyor Examination Test Plan and Format (Possible Action)

Ms. Christenson explained the budget situation and advised the Board of her request to the examination development committee to support a four-hour state-specific examination. The examination development committee indicated that it would support the Board in developing a four-hour state-specific examination due to the budgetary problems. Ms. Christenson advised that a examination development specialists and psychometricians have indicated that a four-hour examination will be legally defensible.

Mr. Graham Dawson and Mr. Ian Wilson, Professional Land Surveyors who are members of the examination development committee, advised the Board of their preference for a six-hour state-specific examination.

Mr. Dawson asked how the professional societies could help the Board with the budgetary problems. Ms. Christenson advised the professional societies could help by supporting the Board in gaining access to the monies in the Board's reserve.

MOTION: Mr. Lazarian/Mr. Hopwood moved to approve the Draft California-Specific Professional Land Surveyor Test Plan for the purpose of the development and administration of a four-hour design-type examination and to allow candidates to pass the examination in parts.

VOTE: 8-2, motion carried. Mr. Welch, Mr. Wilson – nay.

c. Requirements for Land Surveyor Licensure by Comity (Possible Action)

MOTION: Mr. Lazarian/Mr. Hopwood moved to allow, for the purposes of comity, candidates who hold a valid license from another state or territory and who have taken and passed the NCEES PLS examination to only take and pass the state-specific PLS examination and the Laws and Board Rules examination in order to obtain licensure as a PLS in California.

VOTE: 10-0, motion carried.

10. Legislative

a. Discussion of Legislation for 2002, including but not limited to: AB 269 (support), AB 2283 (Watch), SB 1347 (watch), SB 1955 (support), SB 2018 (support), SB 2024 (support), SB 2025 (support), SB 2026 (support). (Possible Action)

Mr. Hopwood reported that there were no updates or changes to the information contained in the agenda packet.

b. Status of Regulations.

Mr. Hopwood reported that there were no updates or changes to the information contained in the agenda packet.

12. Technical Advisory Committee Reports

a. Land Surveying

1. Report on the November 14, 2002, Meeting

Mr. Welch reported that the LSTAC met and discussed the proposed amendments to the definition of responsible charge.

2. **Log Book for Recording Land Surveyor Applicants' Experience (Possible Action)**
Mr. Welch reported that a few minor changes need to be made to the logbook; it should be ready to be presented to the Board at the January 2003 meeting.

b. **Civil Engineering**

1. **Report on the November 14, 2002, Meeting**
Mr. Duffy reported that the CETAC met and discussed the proposed amendments to the definition of responsible charge.

2. **Appointment of CE-TAC Members (Possible Action)**
MOTION: Mr. Duffy/Mr. Hopwood moved to appoint Michael Whiteside to the CE TAC for a two-year term expiring June 30, 2004.

VOTE: 10-0, motion carried.

c. **Geotechnical/Structural Engineering**

1. **Report on the November 14, 2002, Joint Meeting**
Mr. Foley reported that the SE & GE TACs met and discussed the proposed amendments to the definition of responsible charge.

2. **Status of Structural Engineering Examination Program (Possible Action)**
Dr. Brandow reported that the SETAC reviewed the information regarding the up-coming survey of Structural Engineers that will be part of the occupational analysis and used to develop the test plan.

3. **Engagement/Reference Form for the Structural and Geotechnical Engineer Applications (Possible Action)**
Mr. Foley reported that the GE & SE TACs reviewed the reference forms for Structural and Geotechnical Engineer applicants and had some concerns about the responsible charge requirements described in the regulations. This information will be provided to staff and legal for further review prior to being presented to the Board.

d. **Electrical/Mechanical Engineering**

1. **Report on the November 14, 2002, Joint Meeting**
Mr. Wilson reported that the EE & ME TACs met and discussed the proposed amendments to the definition of responsible charge.

Mr. Fruchtman reported that the EE & ME TACs are still interested in providing articles for the Board's website regarding seismic issues relating to electrical and mechanical engineering.

e. Board Assignments to TACs (Possible Action)

Ms. Eissler requested that all of the comments from the TACs regarding the responsible charge definitions be given to her as soon as possible so that she can prepare the staff report with all of the TACs' comments and suggestions for the January 2003 Board meeting.

The Board recessed the meeting at 3:30 p.m. to begin again at 9:00 a.m. on Friday, November 15, 2002.

Friday, November 15, 2002

Board Members Present: Millicent Safran (President), Gregg Brandow (Vice-President), Arthur Duffy, David Chen, James Foley, David Fruchtman, Andrew Hopwood, Stephen Lazarian, Michael Welch, and Dale Wilson.

Board Members Absent: Kathryn Hoffman.

Board Staff Present: Cindi Christenson (Executive Officer), Gary Duke (Legal Counsel), Susan Ruff (Liaison Deputy Attorney General), Nancy Eissler (Attorney General Liaison Analyst), Cindy Morris-Hoppe (Executive Analyst), Debbie Thompson (Budget Analyst).

Public Present: See Attached

1. Roll Call to Establish a Quorum

The meeting was called to order at 9:05 a.m. Roll call was taken, and a quorum was established. Mr. Lazarian arrived at 10:00 a.m.

2. Public Comment

Mr. Timothy Craggs representing CalTrans expressed concerns on behalf of CalTrans about the possible cancellation of the Board's licensing exams in April 2003. Mr. Craggs indicated that CalTrans has approximately 4,000 registered engineers and 800 licensed land surveyors. CalTrans relies on these individuals to deliver approximately $1.5 billion in projects each year, which significantly impacts California's economy. Due to the attrition of a number of registered individuals at CalTrans, their pool of licensees has decreased and they rely on the Board's exams every year to replenish their engineers that deliver the projects. Approximately 170 CalTrans employees are promoted into a position of responsible charge each year and cancellation of the April exams will hamper CalTrans's ability deliver these future scheduled projects. Mr. Craggs stated that CalTrans expects approximately 400 of its employees to participate in the exam for April and requested the Board not cancel the April exams.

Mr. Foley questioned if CalTrans supported Mr. Craggs' position at the Department level. Mr. Craggs answered that his position was supported and provided Board members with a letter from Brent Felker, Chief Engineer of CalTrans, regarding CalTrans's concerns.

Mr. Michael Sarieh and Mr. R. Patel, who identified themselves as applicants, also commented regarding the Board's possible cancellation of the exams.

Mr. Lazarian questioned if the Board was able to track its fund reserve level every month. Ms. Thompson stated that it is tracked monthly. The revenue received by the Board is reported on the State Calstars reporting system every month. Board members expressed concern about the possibility of the Board's revenue being borrowed to cover the state's deficit problem. Funds borrowed in the past from DCA Boards had to be repaid, the most recent example being the Malibu Lawsuit whereby funds borrowed were paid back with interest to DCA Boards over several years time.

9. Administrative

a. Fund Condition

Ms. Thompson reported on the changes to the fund condition dated October 15, 2002. These changes include elimination of the $160,000 in FY 2003-04 BCP funding; reduction in FY 2002-03 revenue projected; delay of fee increase fiscal impact to FY 2003/04; and reduction in ongoing expenditures growth from 2% to 1.2%. Revenue received as of September 30, 2002 is $2,553,896.

b. FY 2002/03 Budget

Ms. Thompson reported the balance available after projected expenses has changed from the $5,934 excess balance reported in the long agenda to an approximate $223,000 deficit. Preliminary information received after the October 2002 exams increased the projected National exam grading costs because the exam population appeared to be higher than anticipated. Ms. Thompson reported that the Board's $148,000 in expense cuts, approved at the last Board meeting, have been included in the revised expense projections except for the cut Subject Matter Experts (SME). Because the September 30th reported SME expenses came in higher last year at this time, cuts may not be possible. Additionally, costs for the Special Civil exam occupational analysis are not included in the projections.

Regarding the **FY 2003/04 Budget,** Ms. Thompson reported that a **$83,064 deficit** is projected and this deficit will increase with the National exam population increases that continue to occur. Changes in the Board's projected expenses from FY 2002-03 to FY 2003-04 include costs added for the Special Civil exam occupational analysis and cost for needed computer upgrades.

c. Statewide Position and Dollar Reduction Plan

Ms.Thompson reported that of the reported $296,000 expenses associated with the Board's six (6) reported vacant positions, the Department of Finance (DOF) decided to cut $252,000 for five (5) of the Board's vacant positions. No information has yet been provided as to how or when the Board can request 50% of these funds be appropriated back

to the Board pursuant to Control Section 31.70 language in the 2002 Budget Bill.

d. FY 2003/04 Budget Change Proposals

Ms. Thompson reported that the Board's $160,000 BCP requests were returned from Department of Finance (DOF) unapproved. DOF's review of requests focused on limiting government growth due to the current fiscal environment and the economic uncertainty faced by the state.

e. Adoption of Amendments to Board Rule 407 (Fees)

Ms. Thompson reported on the status of the Fee Regulations. A 15-day public comment period on the modifications to reduce the amount of the biennial renewal and application fees in the proposed regulations, as approved at the September Board meeting, was noticed on October 21, 2002, and ended on November 5, 2002. This proposed fee reduction was done at the request of the State and Consumer Services Agency because of the number of comments received in opposition to the increase and because the original proposed fee increases would bring the Board's account higher than the required 3-6 months reserve.

Regarding the reduction in the proposed fees, the Board received three additional email comments after the 15-day re-notice all opposing the application fee increase. None of these comments warrants changes to the regulations as proposed.

MOTION: Dr. Chen/Mr. Hopwood moved to adopt the amendments to Board Rule 407 and direct staff to prepare the final rulemaking file for submittal to the Department of Consumer Affairs and the Office of Administrative Law.

VOTE: 9-0, motion carried.

f. Fiscal Impact of Administering the EIT Examination in Japan

At the last Board meeting, Japan representatives requested that the Board assist them in administering the Engineer-in-Training examination in Japan. The Oregon Board had previously administered the exam for Japan but can no longer provide this assistance to them. Ms. Thompson reported that the Board would experience an additional $97,984 cost increase to the Board to administer the NCEES EIT exam in Japan. Although Japan representatives indicated they would reimburse the Board for all the costs involved, legislative and Governor's approval of a BCP to receive this reimbursement would be required.

MOTION: Mr. Hopwood/Dr. Chen moved that the Board respond to the Japan representatives that the Board is unable to provide the assistance at this time.

VOTE: 9-0, motion carried.

g. Possible Cancellation of April Examinations due to Funding Shortage

Ms. Thompson pointed out that the additional revenue the Board receives in the future for the proposed fee increases will go into the Board's reserve account. Funds in the reserve account cannot be used to cover expenditure increases without legislative and Governor approval. Ms. Thompson distributed copies of projections for a $223,000 increase in expenses for the Board's October and April exams. Ms. Thompson also reviewed alternatives to cut Board expenses to either absorb these costs or eliminate the exam costs. These alternatives include obtaining approval for a deficiency request for the shortfall this FY; cancellation of one or more of the April NCEES exams and a cut of additional Board planned expenses this FY.

Dr. Chen expressed the concern that in order to maintain credibility, the Board should do everything in its power to eliminate the deficit through expense cuts before cancellation of exams is considered. Cancellation of the April exam will cause a significant hardship upon individuals who study several months ahead of time. Ms. Christenson stated that she would place on the Board's website frequently asked questions to keep candidates who apply updated to the Board's decisions regarding a possible cancellation. NCEES has volunteered to look into a short-term loan to the Board in the event the Board falls short of funds needed to cover the April exam costs.

Mr. Foley stated that because the EIT exam is an entry-level exam for many into the engineering profession, it should not be considered for cancellation. Cancellation of the EIT could be damaging to the State economy in terms of employment income. Also, Mr. Wilson stated that the EIT applicants need to take the exam as early as possible once they are out of school. Many students take their classes based upon taking the exam in April.

Mr. Duffy stated that the Civil examination is just as important as the Engineer-In-Training examination.

Mr. Duffy also mentioned the "Irony" of raising fees at the same time of considering canceling some of the examinations.

The Board recently cut out planned expenses for the biennial bulletin, equipment, one Board meeting, reduced travel, reduced advisory committee meetings, reduced printing costs, and cut out one exam site

from it's exams. Additionally, the enforcement program has reduced expenses as a result of fewer staff able to process enforcement cases.

Mr. Lazarian suggested the April 2003 examinees be limited on a prorated basis so that all exams could still be administered, Mr. Duke stated that the Board would need procedures in place to ensure the method chosen to limiting candidates would be legally defensible.

MOTION: Dr. Chen/Mr. Wilson moved to authorize staff to prepare a deficiency funding request in the amount of $223,000 to obtain the additional funding needed to pay for the NCEES examinee population increase costs for the October and April examinations this fiscal year. In the event the Board does not receive approval of the additional funding before January 3, 2003, staff is to proceed with the cancellation of the April EIT examination.

After discussion, the motion was amended as follows:

AMENDED MOTION: Dr. Chen/Mr. Wilson moved to authorize staff to prepare a deficiency funding request in the amount of $223,000 to obtain the additional funding needed to pay for the NCEES examinee population increase costs for the October and April examinations this fiscal year. In the event the Board cannot obtain sufficient funding, staff is to proceed with the cancellation of the April EIT examination.

VOTE: 1-9, motion failed. Dr. Chen – aye.

MOTION: Mr. Lazarian/Dr. Chen moved to authorize staff to prepare a deficiency funding request to obtain the additional funding needed to pay for the NCEES examinee population increase costs for the October and April examinations this fiscal year, taking into consideration the additional cost-cutting measures of cutting planned equipment purchases (approximately $7,000) and mailing/postage to notify licensees regarding the bulletin (approximately $26,000). Staff is directed to timely and adequately notify all Board members of the status of the deficiency request prior to the January 2003 meeting and to provide updated information on the Board's website for all interested parties.

VOTE: 10-0, motion carried.

MOTION: Mr. Lazarian/Dr. Chen moved that, in the event that the Board is not successful in obtaining the deficiency funding in

the amount sufficient to pay for the NCEES examinee population increase costs for the October and April examinations this fiscal year, then, due to limited and restricted resources, limitations will be set on the number of examinees who will be scheduled to take any and all of the examinations administered in April 2003. Staff is directed to develop fair and equitable alternatives on a parity basis for setting these limitations and to present these alternatives at the January 2003 Board meeting.

VOTE: 9-0-1, motion carried. Mr. Fruchtman abstained.

MOTION: Mr. Fruchtman/Mr. Hopwood moved that, in the event that legal issues prevent the Board from setting limitations on the number of examinees who will be scheduled to take any and all of the examinations administered in April 2003, then staff is directed to cancel the April 2003 Civil, Electrical, Mechanical, and Chemical Engineer examinations and to still administer the EIT and LSIT examinations in April 2003.

VOTE: 5-4-1, motion carried. Mr. Lazarian, President Safran, Mr. Welch, Mr. Wilson – nay. Dr. Chen abstained.

President Safran appointed herself and Vice-President Brandow to a two-member committee to work with staff and legal on developing the alternatives for setting the limitations.

11. Enforcement

a. Enforcement Program Update

1. Enforcement Outreach Program

Ms. Eissler advised the Board that she; Jacqueline Jenkins, the Board's Enforcement Outreach Coordinator; and Board Members Mike Welch and Andy Hopwood had attended the Sesquicentennial Celebration for the San Bernardino Initial Point in Yucaipa on November 9. This event celebrated the 150th anniversary of the setting of the initial land surveying point in the San Bernardino Mountains. All surveys in southern California are based on this initial point.

2. Status of Discussions regarding Amendments to Board Rules 404.1 & 404.2 (Definitions of Responsible Charge)

Ms. Eissler advised the Board that all of the TACs had discussed the proposed amendments to the definitions of responsible charge and that the staff liaisons to the TACs are to give her the comments from the TACs so that she can coordinate them into the staff report to be presented at the January 2003 Board meeting.

b. Adoption of Amendments to Board Rule 404 (Definitions) (Possible Action)

Ms. Eissler reviewed the information contained in the staff report regarding the comments received from the public and the responses to those comments. Ms. Eissler advised the Board that Ms. Ruff had assisted greatly in the preparation of the Board's official responses to the comments that would be included in the final rulemaking file. Ms. Eissler further advised the Board that no changes needed to be made to the rulemaking proposal and language as it was originally noticed in response to the comments received. Ms. Eissler recommended that the Board approve the recommended responses, as summarized in the staff report, and adopt the final language for submittal of the rulemaking file.

MOTION: Mr. Hopwood/Mr. Foley moved to approve the recommended responses to the comments, to adopt the amendments to Board Rule 404 as shown in the agenda packet, and to direct staff to prepare the final rulemaking file for submittal to the Department of Consumer Affairs and the Office of Administrative Law.

VOTE: 10-0, motion carried.

c. Approval of Amendments to Proposed Board Rules 475 & 476 (Codes of Professional Conduct) (Possible Action)

Ms. Eissler reviewed the information contained in the staff report regarding the changes to the language as previously approved by the Board and the additional changes recommended to be made. Ms. Eissler explained that the changes will require a 15-day noticed public comment period. She advised the Board that any comments received during that 15-day period, and the recommended responses, would be presented at the January Board meeting.

After some discussion by the Board, its staff, and its attorneys, the following motion was made:

MOTION: Mr. Wilson/Mr. Fruchtman moved to approve the modifications to proposed Board Rules 475 and 476 as shown in the agenda packet, with the following changes:

The first sentence in Subdivision (a) is to be changed to read as follows:

"A licensee shall provide professional services for a project in a manner that is consistent with the laws, codes, ordinances, and regulations applicable to that project."

The phrase “project owners” in Subdivision (b)(1) is to be changed to “property owners or their authorized representatives.”

Once these changes are made, along with any renumbering of the subdivisions that might be necessary, staff is directed to notice the modifications for a 15-day public comment period.

VOTE: 10-0, Motion carried.

13. Liaison Reports (Possible Action)

a. ABET

Mr. Hopwood, Mr. Foley, Mr. Wilson, and Dr. Chen reported on their attendance at various ABET visits.

b. NCEES

No report given.

c. Technical and Professional Societies

No report given.

14. President's Report

No report given.

15. Executive Officer's Report

1. Administration Report

a. Executive summary report

Ms. Christenson reviewed the information contained in the agenda.

b. State budget

Ms. Christenson advised that she had no further report beyond what was reported by Ms. Thompson under the Administrative report.

2. Personnel

a. Hiring freeze

The hiring freeze is still in effect.

b. Vacancies

Ms. Christenson reported that because of the hiring freeze, we are still unable to fill any of the staff vacancies at this time.

3. Enforcement/Examination/Licensing

a. College Outreach

No report given.

b. Report on October Examination Administration

Ms. Christenson advised that the October examination administration went well.

4. Publications/Website

a. Website activity

No report given.

5. Other

a. DCA update

Ms. Christenson advised that she believes the Title Act Study report has been submitted to the Legislature, but she is not sure if it is available to the public yet. She advised that the Board has not been given a copy of it yet.

Ms. Christenson advised that she will be putting together a packet of information for the Board regarding proposed changes to the NCEES Model Law for Surveyors and will place this item on the agenda for discussion at the January 2003 Board meeting.

16. Approval of Board Travel (Possible Action)

No action taken.

7. Comity and Temporary Authorization Applications.

Since Ramon Riba, the applicant for temporary authorization, did not make a personal appearance before the Board regarding his application, the Board could take no action on it.

17. Other Items Not Requiring Board Action

a. Next Board meeting: January 23 & 24, 2003, Paradise Pier Hotel, Anaheim, California.

President Safran suggested that the January meeting should be a one-day meeting held on Thursday, January 23, because she, Ms. Christenson , and Mr. Hopwood have to attend an NCEES meeting on January 24.

Mr. Foley thanked Ms. Ruff and Mr. Duke for all of their assistance to the Board and staff on the rulemaking actions relating to the proposed definitions of negligence and incompetence and the proposed codes of professional conduct.

18. Adjourn

The Board adjourned at 12:15 p.m.

PUBLIC PRESENT

George Shambeck, representing CLSA
Steve Hao, representing CalTrans
Carl C deBaca, representing CLSA
Ian Wilson, PLS
Graham Dawson, PLS
Michael Whiteside, RCE
Tom Stout, representing CSPE
Art Sutton, EE
Richard Markuson, representing CELSOC
Bonnie Nakamoto, representing CPIL
Ralph Ricketson, representing CalTrans
Timothy Craggs, representing CalTrans
Harvey Gobas, representing ASCE – LA Section
Michael Sarieh
Edgar G. Dymally, representing ASCE