

1 NEW MEXICO STATE BOARD OF LICENSURE FOR PROFESSIONAL
2 ENGINEERS AND PROFESSIONAL SURVEYORS

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6 BOARD MEETING
7 November 3, 2017
8 9:40 a.m.

9 New Mexico Department of Transportation District 3
10 7500 Pan American Freeway, Northeast
11 Albuquerque, New Mexico
12

13 BOARD MEMBERS:

- 14 Mr. Karl Tonander, Board Chair
- 15 Mr. David Cooper, Board Vice Chair
- 16 Mr. Ron Bohannon, Board Member
- 17 Ms. Julie Samora, Board Member
- 18 Mr. Paul Brasher, Board Member
- 19 Mr. Glen Thurow, Board Member
- 20 Ms. Augusta Meyers, Board Member
- 21 Mr. Clifford Spirock, Board Member
- 22 Dr. Walter Gerstle, Board Member

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A P P E A R A N C E S

Mr. Perry Valdez, Executive Director
Ms. Annette Thompson-Martinez, Deputy Director
Ms. Angelica Urioste, Executive Assistant

For the Board:

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I N D E X

(No exhibits were marked.)

REPORTER'S CERTIFICATE 136

1 MEMBER TONANDER: All right. May we begin
2 again? All right. I have 9:40 a.m. The executive
3 director is now lost. I swear I just saw him. Now
4 it's 9:41. We'll convene the full Board meeting,
5 starting with roll call.

6 MR. VALDEZ: Karl Tonander.

7 MEMBER TONANDER: Here.

8 MR. VALDEZ: Augusta Meyers.

9 MEMBER MEYERS: Here.

10 MR. VALDEZ: David Cooper.

11 MEMBER COOPER: Here.

12 MR. VALDEZ: Paul Bohannan.

13 MEMBER BOHANNAN: Here.

14 MR. VALDEZ: Julie Samora.

15 MEMBER SAMORA: Here.

16 MR. VALDEZ: Paul Brasher.

17 MEMBER BRASHER: Here.

18 MR. VALDEZ: Joshua Skarsgard. Glen
19 Thurow.

20 MEMBER THUROW: Here.

21 MR. VALDEZ: Clifford Spirock.

22 MEMBER SPIROCK: Present.

23 MR. VALDEZ: Dr. Walter Gerstle.

24 MEMBER GERSTLE: Here.

25 MR. VALDEZ: Mr. Chair, we have a quorum.

1 MEMBER TONANDER: Thank you. We have one
2 member in the audience. Could you introduce
3 yourself?

4 MR. BURKHOLDER: My name is Earl
5 Burkholder. I'm retired from teaching in the
6 surveying engineering program at New Mexico State
7 University and I'm on the agenda later.

8 MEMBER TONANDER: Thank you very much.
9 Welcome.

10 Meeting notification. Mr. Valdez.

11 MR. VALDEZ: Mr. Chair, members of the
12 Board, the meeting was notified in the Albuquerque
13 Journal and the Board's website according to the
14 Public Meeting Guide.

15 MEMBER TONANDER: Thank you very much.
16 The next item is approval of the agenda. Could I
17 have a motion to approve?

18 MEMBER BOHANNAN: Mr. Chair, I move
19 approval of the agenda as published.

20 MEMBER TONANDER: Thank you. Is there a
21 second?

22 MEMBER SPIROCK: Second.

23 MEMBER TONANDER: Is there any discussion?
24 Any changes we need to make to it? No discussion?
25 All in favor? Opposed? (Approved.)

1 Thank you for that clarification. The
2 next item is approval of the minutes.

3 MR. VALDEZ: Mr. Chair, on the approval of
4 minutes June 2nd, 2017, we need to go back on the
5 record for approval because there was an amendment
6 under the section -- excuse me, I don't have my
7 information up -- but a section where you talked
8 about the proposed rule changes and the approved
9 minutes. It says there was no discussion. However,
10 there was discussion and a vote regarding the
11 proposed rule changes. So we added that in there
12 into the minutes.

13 MEMBER TONANDER: Thank you. I would
14 entertain a motion either to do them separately or
15 together.

16 MEMBER MEYERS: So moved to approve both
17 minutes from June 2nd, 2017, as well as the minutes
18 of August 11.

19 MEMBER BOHANNAN: Second.

20 MEMBER TONANDER: Thank you. Discussion?
21 Seeing none, all in favor of approval, aye.
22 Opposed, same sign? Thank you. (Approved.)

23 Now to the main event. Action on the
24 proposed rule changes. I would suppose we'd want to
25 do these individually just as we did in the hearing.

1 Okay. So I guess we'll still follow the same
2 procedure, though, if we can go for a motion to
3 approve, a second, and then provide discussion.

4 MEMBER SPIROCK: When we take those into
5 consideration, do we attach the exhibits to them or
6 are those already attached by the public hearing
7 process?

8 MEMBER TONANDER: Those are definitely in
9 the hearing. I would ask counsel's opinion on that,
10 though, when she gets the opportunity.

11 MS. POLI: Thank you. Thank you,
12 Mr. Chair, members of the Board. Can you repeat the
13 question, please?

14 MEMBER SPIROCK: If we were to make a
15 motion to approve the text of the public hearing
16 process and there had been public hearing exhibits
17 attached, correspondence or public testimony, do we
18 need to include that in the motion or just move to
19 approve and go into discussion, those are
20 automatically attached?

21 MEMBER TONANDER: Perhaps like the e-mail
22 that's talking about continuing professional
23 development? Would we need to actually somehow
24 attach it here to say it's been done?

25 MEMBER SPIROCK: Or just move to adopt the

1 public hearing language.

2 MS. POLI: I'm struggling a little bit,
3 Member Spirock, to understand the question. So I'm
4 going to rephrase it to where I think you're asking
5 me. You want to know if we need to approve -- if we
6 should approve the minutes of what happened at the
7 rulemaking hearing a few minutes ago?

8 MEMBER SPIROCK: We have a rulemaking
9 process that now takes public testimony and
10 correspondence as specific exhibits. I'm inclined
11 to make a motion to approve the proposed changes to
12 1639.1 as discussed and approved -- as discussed and
13 concluded in the rules hearing. This committee is
14 now going to act on that. Do I need to attach any
15 of the other exhibits to the minutes in making of
16 the motion, or are those already attached to the
17 rules hearing process?

18 MS. POLI: You don't need to, Member
19 Spirock, attach anything to the motion. So if
20 you're intending now to propose a motion to adopt
21 one of the rules that was noticed and was part of
22 the rulemaking hearing, you may do so just by making
23 a motion.

24 MEMBER TONANDER: And just for the sake of
25 making sure we use the correct language, would it be

1 move to adopt section blah, blah, blah, per what was
2 published?

3 MS. POLI: Correct. That's exactly right.

4 MEMBER TONANDER: Okay. And that's our
5 starting point, anyway.

6 MS. POLI: Yes, Mr. Chair.

7 MEMBER TONANDER: Okay. So with that in
8 mind, could I get a motion from someone for the
9 first one?

10 MEMBER BOHANNAN: Mr. Chair, I propose to
11 move Section 16.39.1 NMAC general provisions as
12 published and heard at the public hearing.

13 MEMBER MEYERS: Second.

14 MEMBER TONANDER: Thank you. Discussion?
15 Probably not the one there's going to be a lot of
16 discussion about. That's fine. That's how it
17 works. Some are easy and some aren't. Okay. Being
18 no discussion, all in favor, aye? Opposed, same
19 sign. (Approved.)

20 Thank you. And if there are any opposed,
21 I will probably go back and specifically do a roll
22 call, just so everybody's clear on the record.

23 MEMBER BOHANNAN: Mr. Chair, in the matter
24 of 5B, I move approval of 16.39.2 NMAC, Continuing
25 Professional Development, as published in the public

1 hearing previously.

2 MEMBER MEYERS: Second.

3 MEMBER TONANDER: Thank you. For
4 discussion on this one, I would like to point out
5 what was Exhibit 11, I believe.

6 MS. POLI: It was.

7 MEMBER TONANDER: There was a comment on
8 that. At first blush I don't think it's actually an
9 accurate presentation of what's in there. I don't
10 believe we've actually restricted the reading, but I
11 would say we should at least look at it to make
12 sure.

13 MS. POLI: Would you like me to read this
14 for the transcript? For purposes of a clear
15 transcript, I'm going to read the e-mail that was
16 received by the Board's, looks like, the executive
17 director, and it's from David Tull. So here's the
18 e-mail. "I have comments on the deletion of
19 16.39.2.8D9, Continuing Education Credit for Review
20 of Technical Articles, Periodicals, et cetera. I
21 spend about ten hours plus a month reading technical
22 journals and periodicals related to civil
23 engineering and find it to be a good source to keep
24 current on new ideas. I realize it is not generally
25 a verifiable source of PDHs, but it still has a

1 practical and useful purpose. I would recommend the
2 allowance of up to 4 to 10 PDH units per cycle for
3 this activity for credit as continuing education.

4 Sincerely, David Tull, PE."

5 Thank you.

6 MEMBER BOHANNAN: Mr. Chair, I would have
7 a comment to that e-mail. If the individual is
8 doing that much research, I would suggest that the
9 staff have him document it and look under continuing
10 education unit which is 10 PDHs. If you look at
11 section E3, when you're putting that many hours into
12 research, then you could structure it into such a
13 way that it almost becomes equivalent course work at
14 an educational facility. So I would not be in favor
15 of changing the rule as we have amended them, but I
16 would just instruct staff that -- to educate this
17 individual that he just needs to approach the
18 continuing education credits differently.

19 MEMBER SPIROCK: Mr. Chairman, two
20 observations. One, this individual had ample time
21 and notice to go at an earlier hearing and express
22 his views on what was considered. And secondly I
23 think the key word of his e-mail is "verifiable."
24 My concern is that in surveying the site we would
25 get besieged with newspapers, periodicals, things,

1 and you know, if I take five minutes to read
2 something, it took me 20 minutes to get into the
3 website, do I then look at 25 minutes of
4 professional development hours? I think not.

5 MEMBER THUROW: Mr. Chairman, from the
6 standpoint of NCEES, I think we want to try to
7 closely parallel the suggestions of the Education
8 Committee as far as incorporation of the proposed
9 rules, the point being that for mobility purposes, a
10 PDH that is acquired in one jurisdiction can be
11 accepted in other jurisdictions, and I don't think
12 very many other jurisdictions accept reading or
13 self-study as a PDH satisfactory activity. Thank
14 you.

15 MEMBER TONANDER: Notably, the changes
16 that were made were to follow by the rules, which
17 ideally other states will adopt as well over time.

18 MEMBER THUROW: So we will be in
19 synchronization with other states and jurisdictions.

20 MEMBER TONANDER: No further comment? All
21 in favor? Opposed, same sign? (Approved.)

22 MEMBER BOHANNAN: Mr. Chair, in the matter
23 of agenda item 5C, I move approval of 16.39.3 NMAC,
24 Engineering Licensure, as published in the public
25 hearing.

1 MEMBER TONANDER: Is there a second?

2 MEMBER MEYERS: Second.

3 MEMBER TONANDER: Discussion?

4 MEMBER SAMORA: Yes, I have got just a
5 couple comments I just want to express to the Board.
6 I have a few concerns about some of the steps we
7 took in the Practice Act to make the education
8 requirements tie more closely to NCEES for any
9 degree that's outside ABET credited.

10 And let me just sort of lay the groundwork
11 here. My concern is that most foreign degrees --
12 not all, but a majority of foreign degrees -- are
13 likely to not meet the NCEES requirement. And a lot
14 of that is because, one, the NCEES is a great goal
15 and it's a very good guideline, but it requires 128
16 hours. As an example, UNM's program and many others
17 are actually lower in their standards, so they're
18 more like 120 hours. So that's one.

19 And then a lot of times, the NCEES -- we
20 have kind of a set -- they kind of follow what ABET
21 does to some degree, so they'll have certain
22 humanities and other requirements. And some of
23 these foreign degrees will be lacking in things, in
24 classes such as humanities. You know, certainly if
25 they're lacking in math or engineering, that causes

1 a lot of concern. And oftentimes they'll be
2 actually exceptive hours in engineering, more
3 focused on engineering, and I'm talking about all
4 over the world.

5 So I think it's really important for our
6 Board to be able to use discretion, which is what we
7 have done in the past, to really judge these foreign
8 degrees and judge their transcripts.

9 So having voiced that, I think that some
10 of the language -- I'm still a little bit -- not
11 concerned, but wondering about the interpretation of
12 the language, and so I just wanted to lay that out
13 there. I do see that in the Practice Act, you know,
14 under the 61-23-14.1, where we talk about
15 endorsement, it's item D, it's on page 7, but I'll
16 just recite it. It says, "An applicant may be
17 licensed by endorsement or comity if the applicant,
18 one, is currently licensed as an engineer in the
19 District of Columbia, in another state, a territory
20 or possession of the United States, provided the
21 licensure does not conflict with the provisions of
22 the Engineering and Surveying Act, and that the
23 standards required by the licensure of the
24 applicant's qualifications equaled or exceeded the
25 licensure standards in New Mexico at the time the

1 applicant was initially licensed." And then there's
2 an "or" for a foreign country.

3 So I mean, I actually think that this
4 allows us to have some discretion, in my opinion.
5 Okay? Then when you look at our administrative
6 code, we did make some changes, but if you look at
7 the administrative code, 16.39.3.13, and you look at
8 endorsements, that is a section on endorsements.
9 You know, we talk a little bit about the NCEES and
10 that that's our new criteria, but if you look at
11 letter N, it says, "For purposes of endorsement, an
12 approved engineering curriculum shall be an ABET
13 accredited engineering curriculum of four years or
14 more or equivalent as determined by the Board."

15 So I guess I would just submit to the
16 Board that, you know, I would support -- and I know
17 we've spent a lot of time on this. I would support
18 the code the way it's written, and I would just ask
19 that the Board be open to using some discretion to
20 look at these foreign degrees. I think we have a
21 lot of people coming into the country, they have
22 been working for ten, fifteen years, they may be
23 licensed in other states, and if their degree
24 happens to be lacking a few hours, you know, in the
25 past we have been able to license those folks and so

1 I think we should -- I would just ask the Board if
2 they would consider that.

3 But that's all. I just wanted to state
4 that for the record, and I would be fine with
5 approving the code.

6 MEMBER TONANDER: First.

7 MEMBER BOHANNAN: Julie, I would direct
8 you to look at 16.39.37, the definitions. Because I
9 started looking at that a little bit this morning
10 while we were in the hearing. And if you look under
11 Board approved four-year curriculum in engineering,
12 and you look at item B2 --

13 MEMBER SAMORA: Let me get up to that real
14 quick here. Under definition, okay. Right.

15 MEMBER BOHANNAN: Under 2, it says,
16 "Curriculum not accredited by ABET, but with the
17 minimum number of engineering credits required for
18 accreditation by ABET."

19 So this is the definition section, and my
20 interpretation as a layperson is that this is
21 actually what we're defining as a four-year
22 curriculum. And so I would view B2 as, as long as
23 they have their engineering curriculum satisfied, if
24 they are short the social sciences that we
25 customarily find in foreign degrees, that the

1 section as it reads allows us the flexibility to
2 endorse that individual.

3 MEMBER SAMORA: So that's good. That's
4 just one more mechanism that we're allowed to do at
5 the discretion of the Board.

6 MEMBER BOHANNAN: And I apologize for not
7 getting to this yesterday.

8 MEMBER SAMORA: Well, it's all good. It
9 took me some time to kind of understand it.

10 MEMBER SPIROCK: Mr. Chairman, Ms. Samora,
11 last night at dark-30 I was going through an item
12 that came through the Professional Surveyors
13 Committee, and it had to do with the plethora of the
14 subset items known as advisories, policy advisories,
15 policies, and different wordsmanship to define
16 adopted advisories that our committee uses and
17 publishes on the web to express our concerns. And
18 these advisory opinions are worded in a more
19 informal manner. And as long as they don't
20 contradict some of the hierarchy of law, they help
21 explain what the Board's concerns are.

22 I went through this very policy that is a
23 joint PEPS policy that recites the current language
24 verbatim, as I recollect from last night. I might
25 suggest there's an opportunity to amend that

1 advisory opinion to express your concerns and notify
2 any other Board member or applicants what your
3 concerns are, if your engineering committee approves
4 it, because since it involves surveyors, I imagine
5 we'll look at it, as well, but that way you can
6 express your concerns in more elaborate language.

7 MEMBER TONANDER: Any further comment?
8 Motion and a second. All in favor? Opposed, same
9 sign. (Approved.)

10 Thank you.

11 MEMBER BOHANNAN: Mr. Chair, in item 5D,
12 section 16.3, I move the approval of section 16.39.4
13 NMAC, Incidental Practice, as published in the
14 public hearing this morning.

15 MEMBER MEYERS: Second.

16 MEMBER TONANDER: Thank you. Discussion?
17 I just generally looked to see if everyone's eyes
18 had moved off their screens as an indication we're
19 through. Hearing no discussion, all in favor?
20 Opposed, same sign? (Approved.)

21 Thank you.

22 MEMBER BOHANNAN: Mr. Chair, in the matter
23 of 5E, I move Section 16.39.5 NMAC, rule changes for
24 surveying, as published in the public hearing this
25 morning.

1 MEMBER MEYERS: Second.

2 MEMBER TONANDER: Any comments?

3 Discussion?

4 MEMBER THUROW: Mr. Chair, I do have a
5 comment to make. Concerning -- let me get to the
6 actual nomenclature -- 16.39.5.10, Practice of
7 Surveying, F, Inclusions and Exclusions to the
8 Practice of Surveying.

9 What is listed here in the following
10 passages is a verbatim rendition of the model rule
11 for surveying that are published by NCEES. I am
12 wondering if some reference to that should be made,
13 or if simply the rule itself be noted. It's rule
14 210.25 of the model rules. I know Member Spirock
15 has said he prefers a verbatim listing, but my
16 concern is that if the model rules change, we will
17 not be in sync with the NCEES model rules, and is
18 there some wisdom in simply referring to the model
19 rule itself so that if it changes, that our
20 administrative code will still be in sync with it?

21 MEMBER TONANDER: Counselor, do you have
22 something?

23 MS. POLI: Mr. Chair, Member Thurow, so
24 for example, if you wish to add at the end of this
25 clause that, "comma, or as in accordance with the

1 model rule," you may do that. However, there's a
2 risk, of course, that you take that the model rules
3 change and you don't agree with them, and then
4 you're stuck with them.

5 MEMBER THUROW: Thank you, Counsel. It is
6 a two-edged sword. But the model rules I believe in
7 this particular section are evolved and I was
8 hesitant to lock in the actual verbatim rendition of
9 the model rules if they do evolve in a way that we
10 find desirable, then we're not in court with those
11 rules. But by the same token, I like the addition,
12 we can state them verbatim, but make reference to
13 the model rules at the end. But then, again, if
14 they change in such a way that we do not agree with,
15 we are still locked in, so that's the point of
16 discussion.

17 MEMBER TONANDER: If we added even as a
18 reference at the end, does that create ambiguity as
19 to what the rules are supposed to be since we have
20 them verbatim and then a reference back to them?

21 MEMBER THUROW: It does. I believe it
22 does. So I believe we either refer to the model
23 rules and remove the verbatim, or we leave the
24 verbatim as is and not refer to the model rules.

25 MEMBER TONANDER: Okay.

1 MEMBER THUROW: I just bring this up as a
2 point of concern.

3 MEMBER MEYERS: Can I ask you a question?
4 Excuse me, Mr. Chair. Mr. Thurow, is it your
5 experience that as a professional surveyor, you tend
6 to more agree with the model rules, or is there some
7 idea that there may be more of an opportunity for
8 discourse or disagreement there?

9 MEMBER THUROW: Well, Member Meyers, I
10 agree with this particular section on what is
11 included and excluded from the practice of
12 surveying. I do know that right now there is some
13 legislation before our national Congress that refers
14 to the model rule. As a matter of fact, this
15 legislation adopts them in their entirety, and
16 there's a lot of resistance to that from the
17 geospatial information system community because they
18 feel that the model rules are preventing them from
19 contracting for federal contracts, and that their
20 take on it is that this is simply an attempt by the
21 usual suspects, meaning surveyors, MAPPs, and other
22 organizations, to exclude them from a bona fide
23 practice, and I think this is going to come in the
24 forefront within the next year or two, and there
25 will be some pressure to further modify these rules.

1 So that was my only concern, but I don't
2 know that there's a satisfactory answer at this
3 point, so I'm willing to let them stay as is, just
4 understanding that we may be out of sync in the not
5 too distant future with the thinking of NCEES.

6 MEMBER MEYERS: That clarifies a lot for
7 me. Thank you.

8 MEMBER BOHANNAN: Mr. Chair, I would
9 rather err on having to go back and revisit the
10 rules when a change has been adopted at a national
11 level than to provide ambiguity to our licensees. I
12 think it behooves us to be vigilant on what the rule
13 changes are and whether we agree to them or not.
14 And I think that's our duty as a Board.

15 MEMBER THUROW: Well, I do not disagree
16 with that appraisal, Mr. Bohannan. I simply bring
17 this up as a point of discussion. I support the
18 rules as stated.

19 MEMBER TONANDER: I would add that
20 although I have less experience with NCEES than both
21 of the gentlemen who just spoke, I don't find them
22 to move very rapidly, and they tend to telegraph
23 what they're thinking well in advance, and I think
24 this process at least, and even the very last one,
25 moved fairly rapidly on our end. I think we would

1 be able to capture anything if we wanted to pretty
2 quickly. So long as we have that same process
3 moving forward.

4 MEMBER SPIROCK: Mr. Chairman and Member
5 Thurow, I think I initiated this by looking at the
6 NCEES model and found that whoever authored this did
7 an excellent job. And it fit within the definition
8 of a new thing in our Engineering and Practice Act.

9 And then as I mentioned, to Ms. Samora, I
10 have been going through our advisory opinions and in
11 the case of educational courses, which could
12 fluctuate, those are well embodied in our policies.
13 So just an observation when I foresee us sticking
14 with what's published here, because the only option
15 we have is to kick the baby out; right? It's
16 already been through a rules hearing.

17 MEMBER TONANDER: Would this be a
18 substantial change that would require -- not
19 adoption --

20 MEMBER SPIROCK: So if it stands in 2017
21 to meeting my personal objective of advising
22 surveyors what does and does not constitute
23 surveying and the refining of digital geospatial
24 data and GIS, then as the years roll by and as
25 surveyors become educated, I foresee this being

1 revised with GIS procedures as adopted in the
2 Surveying Committee, Advisory Opinion Number 28,
3 or -- I'm being hypothetical. And then we can go
4 back on a more formal basis, modify our advisory
5 opinions as we will at any time during the year with
6 a vote, and then refine those tweaks in a more
7 expeditious manner. But again, our only option is
8 to throw the whole thing out, and I think that would
9 be ill-advised.

10 MEMBER TONANDER: Great. Further comment?
11 All in favor of approval, aye? Opposed, same sign.
12 (Approved.)

13 MEMBER BOHANNAN: Mr. Chair, in the matter
14 of 5F, I move approval of Section 16.39.7 NMAC,
15 Miscellaneous, as published in this morning's public
16 hearing.

17 MEMBER MEYERS: Second.

18 MEMBER TONANDER: Counsel, is it okay that
19 we're using the abbreviated titles on these? We are
20 identifying the portions of the administrative code.
21 Is that --

22 MS. POLI: Mr. Chair, that's perfectly
23 fine.

24 MEMBER TONANDER: Just wanted to make sure
25 we didn't goof that up by accident.

1 Okay, we have a motion and a second.

2 Discussion? Seeing none, all in favor, aye.

3 Opposed, same sign. (Approved.)

4 MEMBER BRASHER: Mr. Chair, in the matter
5 of the agenda item 5G, 16.39.8 NMAC, Code of
6 Professional Conduct, I move approval and adoption
7 of 16.39.8 NMAC, Code of Professional Conduct.

8 MEMBER MEYERS: Second.

9 MEMBER TONANDER: Thank you. Discussion?
10 Hearing none, all in favor, aye? ("Ayes" stated.)

11 MEMBER COOPER: I need to make a comment
12 about that, and that's why I'm making sure that I
13 can ask the comment.

14 MEMBER TONANDER: Procedurally we may
15 already be dead. We can revisit it, I suppose, if
16 we need to.

17 MEMBER BOHANNAN: For the sake of
18 transparency, I would suggest that we reopen item 5G
19 for discussion.

20 MEMBER TONANDER: Thank you.

21 MS. POLI: To clarify, as I was discussing
22 to the side with Member Cooper, was there a final
23 vote? Was there a vote a moment ago? Okay. And
24 Mr. Bohannan has moved to reopen.

25 MEMBER BOHANNAN: Yes. I need a second.

1 MEMBER SPIROCK: Second.

2 MEMBER TONANDER: Second from Member
3 Spirock, a vote to reopen. All in favor? Opposed?
4 (Approved.)

5 Great.

6 MEMBER COOPER: So generally, in the
7 Professional Code of Conduct, we were talking about
8 it kind of encompasses what are the penalties for
9 bad behavior, right? And in the past we've had
10 discussions, and we've had judgments, stipulated
11 judgments, where you have a small number of Board
12 members deciding the punishment. Are we going to
13 fine a certain amount of money? Are we going to
14 suspend his license or revoke his license? Okay?

15 So I have no problem with a small group of
16 people deciding to fine, but when you have two or
17 three Board members deciding to suspend or revoke
18 someone's license, I don't think that is inherently
19 fair. It would be like going to a civil trial or a
20 criminal trial and having two people or three people
21 on the jury deciding whether you get the death
22 penalty or not. I don't think that's correct.

23 I think that if the committee that you're
24 on, the PS Committee or the PE Committee, is
25 contemplating revocation of somebody's license or

1 suspension of somebody's license, that that should
2 be a full Board matter. You should have more
3 people, and I think everybody should be there to
4 decide the livelihood. And it could be the person's
5 life, you know. I mean, you revoke his license.
6 And so I think a jury of your peers -- that's where
7 I'm going with that. If you have two or three
8 people deciding that you're going to revoke
9 somebody's license, I don't -- that's just my
10 opinion. I just wanted to put that in the record.

11 MEMBER TONANDER: I want to ask a couple
12 of different points on that real quickly. One, is
13 that -- not a criticism. Is that pertinent to this
14 particular section?

15 MEMBER COOPER: We were talking about
16 violations, revocations, and suspensions in part 7.
17 Right? That's in here.

18 MS. POLI: So to clarify, there was a vote
19 on part 7, but not on part 8; correct?

20 MEMBER MEYERS: Right.

21 MS. POLI: And it's the vote of part 7
22 that was -- part 7's been reopened. So I want to
23 clarify, we are talking about part 7.

24 MEMBER THUROW: I thought we were
25 reopening part 8.

1 MEMBER TONANDER: More correctly, 7 was
2 passed, 8 was passed, and we just reopened 8,
3 thinking that's where the whole --

4 MEMBER COOPER: Then I came in at the
5 wrong place. I'm sorry. I thought it was in part
6 8.

7 MEMBER TONANDER: It's okay. This is
8 easily addressed. We can go back and reopen 7 if we
9 can find the pertinent thing to talk to there.

10 MEMBER COOPER: Well, it wasn't even a
11 request to reopen. It was just a comment.

12 MEMBER SAMORA: You wanted to state
13 something for the record.

14 MEMBER COOPER: State for the record.
15 Because I agree with the way it's written and how it
16 was passed, but I think that we should look at that
17 in the future when this comes up.

18 MEMBER TONANDER: I would offer this,
19 maybe. We'll go back and do the vote to approve 8
20 momentarily to get that fixed. But I would say we
21 could add this as an agenda item. Unless it's in
22 conflict with what's in 7, it's at least worthy of
23 some Board discussion at the next meeting where we
24 can take action on it. I think it's a fine thing to
25 discuss.

1 MEMBER COOPER: I apologize. I thought
2 this was in 8. That's why I let it slide through
3 number 7. That's what I wanted to comment on.

4 MEMBER SPIROCK: Mr. Chairman, if I may.
5 Mr. Chairman, Mr. Cooper, I am somewhat sympathetic
6 but somewhat conflicted with the way our
7 administrative code is structured, because it takes
8 legislation and clearly divides it into what is unto
9 surveyors will be surveyors and what is unto
10 engineers will be engineers, and then it brings it
11 back together again. So I'm somewhat concerned that
12 any casual modification of the language might breach
13 that. Thank you.

14 MEMBER TONANDER: Okay. Then I would ask
15 for a motion to approve item 5G on the agenda, which
16 is 16.39.8 NMAC.

17 MEMBER BRASHER: Mr. Chair, in the matter
18 of this item 5G, Part 8, the Code of Professional
19 Conduct for Engineering and Surveying, I move
20 approval of part 8.

21 MEMBER MEYERS: Second.

22 MEMBER BRASHER: I'm sorry, agenda item
23 16.39.8 NMAC, Code of Professional Conduct. I move
24 approval of that agenda item.

25 MEMBER COOPER: Second.

1 MEMBER TONANDER: We've got several
2 seconds. We're okay. Any further discussion? All
3 in favor? Thank you. Opposed? None opposed.
4 (Approved.)

5 I would ask that staff note that we will
6 have an agenda item to discuss this next time that
7 Member Cooper has brought up, and perhaps also
8 unfortunately, Member Bohannon. The rules committee
9 may be taking a look at it ahead of time just to see
10 where it fits.

11 MEMBER BOHANNAN: Sure.

12 MEMBER TONANDER: Thank you. Okay.
13 Public comment. Correspondence. Sir.

14 MR. BURKHOLDER: Thank you.

15 MR. VALDEZ: Members of the Board, under
16 public comment, under the topic in the public
17 comment folder is a letter from Mr. Burkholder and I
18 believe he's also passing out a hard copy. And with
19 that, I will let Mr. Burkholder present his letter
20 regarding the basis of bearing.

21 MR. BURKHOLDER: I'm hard-pressed to keep
22 up with the formalities, but I'll try.

23 Mr. Chair and members of the Board and
24 others, it's my honor to be here today, and I
25 appreciate the indulgence of the Board to consider

1 what I feel, you know, rather strongly about. It
2 has to do with a perceived defect in the current
3 version of the minimum standards, and as Mr. Valdez
4 has noted, I sent him an item request to be placed
5 on the agenda, and presumably you have that. The
6 sheet that I gave you is in addition to that. Is
7 there any question?

8 Okay. I will try to not use up your time
9 unnecessarily, and I will keep it as short as I can,
10 but I'm happy to discuss it at whatever length you
11 like. My understanding is that the minimum
12 standards are based upon input from NMPS and others,
13 but ultimately, the Board is responsible for the
14 final wording and adoption of the minimum standards.
15 When the previous version of the minimum standards
16 were being discussed -- and by "previous version," I
17 think it's the 2007 version, that's what I'm
18 referring to -- within the NMPS, the Minimum
19 Standards Committee discussed possible changes and
20 improvements and as a member of NMPS, I participated
21 in those committee discussions and made suggestions
22 as I felt appropriate.

23 Just a wee bit of background. I'm not a
24 native of New Mexico. I have lived here since 1998.
25 I taught 12 years at New Mexico State University,

1 and I have been licensed both as a professional
2 engineer and as a professional surveyor since moving
3 to New Mexico. I do not, quote, practice in
4 New Mexico.

5 Now, I don't really know what that means,
6 but with respect to my participation in the NPS
7 Minimum Standards Committee, "Burkholder, you don't
8 practice in New Mexico. What do you have to say
9 about our minimum standards?"

10 As an educator, I would like to think I
11 have a lot to say, but as it turns out, I have to
12 agree that the minimum standards really should
13 reflect the practice of the practicing professionals
14 within the state. So I kind of backed off and I was
15 not participating in the Minimum Standards Committee
16 very much of late.

17 However, when the current version of the
18 minimum standards first came to my attention -- and
19 I believe that was at the annual convention in 2016,
20 it was March -- I was chagrined to realize that the
21 minimum standards, especially with respect to the
22 basis of bearing, is not correct. And by "not
23 correct," the particular wording has a requirement
24 for elevation being a part of the minimum standards
25 for publishing a basis of bearing, especially with

1 respect to a modified system. Its elevation is
2 completely irrelevant and, my opinion, is the
3 defect.

4 Now, just a wee bit more background. I
5 had the opportunity to serve two different four-year
6 terms as the editor of the ASCE Journal of Surveying
7 and Engineering. I got a lot of help from a lot of
8 people in that activity. I learned a lot from a lot
9 of people. One of the things I learned is that
10 there's more than one way to say something or to do
11 something, and to recognize a different perspective,
12 a different point of view, and to accommodate those.
13 The process of discussion back and forth is normal.

14 However, it is unacceptable to accept
15 wrong information. It is unacceptable to accept
16 wrong information. And that is the reason why I
17 objected to the basis of bearing.

18 Now, there are two general categories of
19 the way things get done. There's process and
20 there's content. Now, the process that has been
21 adopted and the process that is used here are
22 similar in other places. I am not a process person.
23 And when I make mistakes in process, thank you for
24 correcting me. I am a content person. Maybe that's
25 why I enjoy teaching so much.

1 But as a content person, I really feel
2 that the process people need to kind of pay
3 attention. So the second page of the handout that I
4 gave you is really, really short. It's an example.
5 Back in 1897, the State of Indiana was going to
6 legislate the value of pi. They were going to
7 legislate the value of pi. That would have been a
8 gross mistake.

9 Now, go to the very last paragraph of that
10 handout, and you'll note that a mathematics
11 professor had the occasion to coach the senators on
12 the second reading of that bill, and it died in
13 committee, and it was never published in the minimum
14 standards.

15 So using that as an example, it was my
16 honest feeling that when a mistake like that is
17 brought to the attention of the Board, the Board
18 itself would say, "Thank you, we'll take care of
19 it."

20 I am very disappointed that the Board has
21 not done that, and so I have to fall back to using
22 the process in place to say, "Look, it's wrong, it's
23 an embarrassment to the Board, it's an embarrassment
24 to the professionals, and I'm enormously embarrassed
25 by the fact that we have elevation required as part

1 of the basis of bearing and minimum standards."

2 Who cares? Does anybody care? I do. And
3 that's why I'm willing to make this request, spend
4 the time before the Board. I don't know the best
5 way to do it. But I'm here to learn, and I will do
6 whatever you, the Board, ask me to. Even if you
7 tell me to go away and not come back, I'll do that.
8 Any questions?

9 MEMBER TONANDER: Before we even engage in
10 that, I'll at least say I appreciate your passion
11 for what you're saying, right or wrong. I
12 definitely appreciate it. So just that much.

13 MR. BURKHOLDER: One other quick comment
14 before discussion. There are two other items on
15 there that might be of interest for your
16 information. They are not part of my request, but
17 if the Board would like to hear brief comments on
18 those, I'll be happy to. But specifically, I made
19 the request for the basis of bearing issue and
20 having been heard, I'm satisfied. Thank you very
21 much.

22 MEMBER TONANDER: Thank you. We'll maybe
23 address those separately, but let's get this first.
24 Did you have a question, Counsel, to start?

25 MS. POLI: Yes, sir, I do have a question.

1 Thank you, Mr. Chair. And I completely understand
2 if you're not sure. But regarding basis of bearing
3 and elevation, I find it in a couple of different
4 areas of the law. For example, it might be in the
5 Board's act or in their rules. I know it's in their
6 rules. But I also find it under 12.8.2. Are you
7 familiar with the rules in that section?

8 MR. BURKHOLDER: I think I have tried to
9 be informed, but let's say no.

10 MS. POLI: Okay. So then I was hoping to
11 find somewhere in the law what your document
12 referenced, you know, to assist the Board in
13 potentially making rule changes in the future.
14 That's why I'm asking where you found this
15 information that caused you concern.

16 MR. BURKHOLDER: Well, it's in the minimum
17 standards. July 2016 version of the minimum
18 standards.

19 MS. POLI: All right. I'll find it.
20 Thank you so much.

21 MEMBER THUROW: Mr. Chairman, this matter
22 concerns the minimum standards, which is exclusive
23 to the practice of surveying. The proper form for
24 this to be discussed is in the Surveying Committee
25 and not the full Board. Mr. Burkholder's concerns

1 have been discussed on numerous occasions within the
2 Surveying Committee, and we do not find
3 Mr. Burkholder's comments as reason to change the
4 minimum standards.

5 MEMBER TONANDER: Mr. Spirock.

6 MEMBER SPIROCK: Mr. Chairman, Earl, when
7 I first joined this Board, it was November of '14
8 and one of my first duties was to read your paper on
9 earth-centered, earth-fixed coordinates for a bore
10 hole that affected the oil and gas. I enjoyed it,
11 but I didn't understand it. And then as I read
12 through it and scratched my head, I not only
13 understood it, but I concurred with it. But I took
14 a step back and I said, "Well, I'm not going to
15 revolutionize the Oil and Gas Commission by
16 attempting to change the law or procedure that has
17 ripple effects that I just don't understand. I want
18 to be able to interpret it for an undereducated
19 practicing land surveyor." That's me. I don't hold
20 a degree.

21 Now, I mentioned that to emphasize that
22 when this came before the Professional Surveyors
23 Committee, it did not fall on deaf ears. It was
24 discussed, your correspondence was reviewed, and I
25 do want to mirror Mr. Thurow's presentation in brief

1 that it's been heard, go away. What I do want to do
2 is underscore, as you said in your testimony, there
3 are different ways of skinning the cat. We talked
4 about modifications to the Engineering and Practice
5 Act, the Administrative Code. A subset of that is
6 the minimum standards. And as I mentioned to
7 Ms. Samora, a subset of that are advisory opinions.

8 I would recommend, on a positive note,
9 that you work with the Professional Surveyors
10 Committee and suggest a modification to our Advisory
11 Opinion Number 2, which deals with graphic scales,
12 or come up with a new advisory opinion that we can
13 place in that to clarify your concerns, kind of like
14 precision versus accuracy, to feel self-satisfied
15 that what we're publishing is perhaps wrong but
16 necessary, and ascribe, I hope, to my personal
17 conviction, that the current language is necessary
18 for undereducated surveyors, and we would be
19 confusing what is in place by trying to only deal
20 with those that have a more refined target. Thank
21 you.

22 MEMBER BOHANNAN: I think this is a very
23 important matter and the ripple effect is
24 tremendous, because what you are not taking into
25 account is if the basis of bearing is incorrect, all

1 of the legal transactions in the state are all
2 predicated out of the subdivision ordinance, the
3 state statute and subdivision ordinance, and it
4 has -- from there it goes into various
5 municipalities to where all the plats, all the
6 surveys, all your basic data -- that's the starting
7 point. So I trust the Board is looking at this, the
8 PSC is looking at this in earnest, but I would
9 caution change quickly because the ripple effect
10 could be enormous.

11 MEMBER SPIROCK: To address Mr. Bohannan,
12 one of the concerns on that, as you well said, there
13 are deeds, documents, plats, all of which have
14 convention. But to a surveyor, the strongest
15 convention, the most precedent of all, is when you
16 are tracing something, you have to follow in the
17 footsteps of the prior surveyor. If you don't,
18 you're off in a different direction than a surveyor
19 is supposed to do, not in measuring but in the
20 application of your knowledge to retrace a deed,
21 descriptions, boundaries, easement, and the like.
22 And so in the end that was of concern to the PSC of
23 not changing pi to the 24th place but keeping it to
24 five places, because that's the current convention.
25 Thank you.

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1 MEMBER BRASHER: Let me just ask real
2 quick, there are -- each plat I think has two ties
3 to the State Plane Coordinate System; is that
4 correct?

5 MEMBER COOPER: No.

6 MEMBER BRASHER: Two ties? Aren't there
7 two ties?

8 MEMBER SPIROCK: That's a convention,
9 but --

10 MEMBER BRASHER: It's a convention, but
11 not the rule?

12 MEMBER SPIROCK: As a requirement, there's
13 enough information to retrace the survey that you
14 did.

15 MEMBER BRASHER: Is that related to this
16 issue? Because the plat has a basis of bearing
17 also; right? Is it also -- we heard a presentation
18 maybe a year ago or so -- I forget the gentleman's
19 name, a surveyor who talked to us about XYZ and HMT.
20 You remember that? Does this relate to HMT?

21 MEMBER SPIROCK: No. Underscored, not to
22 me.

23 MEMBER BRASHER: Okay.

24 MEMBER TONANDER: Member Cooper. Do you
25 want to offer an opinion?

1 MEMBER COOPER: Please. Mr. Burkholder is
2 absolutely correct to point out that if there's
3 something wrong, even in the minimum standards, that
4 it's a subset of our entire Practice Act, and if
5 there's deficiencies anywhere in it, it's really not
6 confined to one committee. I don't think it's an
7 error in the basis of bearing as Mr. Burkholder
8 earlier said it is. I think it's a matter of poor
9 writing, is what it is. He is absolutely correct
10 that elevation has nothing to do with basis of
11 bearing. That's a fact. We do have elevation in
12 there, but I think what is happening is that there's
13 a misreading of that statement in that we are
14 informing the licensee that if he uses certain
15 methodologies, there are other requirements to use
16 that methodology and one of the methodologies that
17 he can use in labeling coordinates on his survey and
18 using those as basis of bearing is something that's
19 called Modified State Plane Coordinates. And
20 Modified State Plane Coordinates, part of that
21 calculation is the elevation. Is that not correct,
22 Mr. Burkholder?

23 MR. BURKHOLDER: Yes. May I qualify that
24 yes?

25 MEMBER COOPER: Sure. Absolutely, sir.

1 MR. BURKHOLDER: It gets into the
2 nitty-gritty detail.

3 MEMBER COOPER: Correct.

4 MR. BURKHOLDER: And I go back to the
5 question relative to the difference between
6 standards and specifications.

7 MEMBER COOPER: Correct.

8 MR. BURKHOLDER: Now, we're talking about
9 the minimum standards, but as written, it's got a
10 lot of specifications in it. Is that an issue? I
11 don't know. Now, my understanding of contract law
12 is that there are performance specifications and
13 detail specifications. I'm comfortable with the
14 fact that the minimum standards for basis of bearing
15 should be true north. When you start specifying
16 whether it's geodetic, astronomic, magnetic,
17 whatever, we're getting into the details.

18 MEMBER COOPER: Correct.

19 MR. BURKHOLDER: All right. I would be
20 far more comfortable including details to the effect
21 that a basis of bearing shall be shown in true north
22 within 1 degree, within half a degree, within 10
23 minutes. The tolerance of the basis of bearing is
24 not in the minimum standards. That would be far
25 more applicable than saying that if you use a

1 modified system -- now when you're using a modified
2 system, you're getting into a whole ton of other
3 detail that none of you want me to bore you with.
4 So I'll not go there. So the requirement for
5 elevation as a basis of bearing is irrelevant and
6 should not be in the minimum standards for basis of
7 bearing. Thank you.

8 MEMBER COOPER: I would disagree with
9 that --

10 MEMBER THUROW: I disagree with that as
11 well.

12 MEMBER COOPER: -- with that statement
13 because you are equating the requirement for
14 metadata as it relates to the basis of bearing.
15 Those are two separate statements within the minimum
16 standards. I'm not disagreeing with what you say
17 about what should and shouldn't be done. What I'm
18 disagreeing with is that you're saying that the word
19 "elevation" is wrong in the minimum standards and
20 should be addressed.

21 What has happened is, the Board has made a
22 statement that says, "If you label your survey with
23 Modified State Plane Coordinates, you must list the
24 other components of how you got there," and one of
25 those components is elevation. It's also what zone

1 you're working in, right, if you're right on the
2 edge of a zone, whether you're east zone or west
3 zone. That's all we're asking.

4 So you are correct, that elevation doesn't
5 have anything to do with basis of bearing, but it
6 has everything to do with Modified State Plane
7 Coordinates which we are asking you to list if you
8 so choose to put those values on your survey.
9 Right? If you don't put those values on your
10 survey, then you don't need elevation. That's the
11 separation in those two statements. And that's why
12 I started this off by saying that I believe -- they
13 may be poorly written, and are confusing, but they
14 are not in error. It would be like saying, through
15 a longitudinal line through this point, "Well, if
16 you're not telling me what the longitudinal line is,
17 it's irrelevant; right? It means nothing to me."
18 So you would have to put that on there.

19 If you're going to use grid coordinates
20 right, grid bearings, what's your delta alpha? How
21 do you get back to true north based on those
22 coordinates? It's all the associated metadata that
23 you're using when you list some values. That's all
24 it is.

25 So I take it -- I'm not going to say I

1 take exception to it, but I believe that I disagree
2 with you in the statement that elevation is wrong in
3 the standard language. I don't agree that it's
4 wrong. It's just that it may not be appropriate.

5 MEMBER THUROW: I would just like to add a
6 couple of comments. Mr. Bohannan's comment about if
7 it's wrong, we need to fix it, but his assumption is
8 that it's wrong.

9 The second comment I would like to make is
10 that four options are given in the minimum standards
11 for establishing the basis of bearing.

12 Mr. Burkholder objects to one out of the four
13 options. And you have to take it in the context in
14 which it appears, and it says, New Mexico State
15 Plane Coordinates with specifics to elevation,
16 vertical datum, horizontal datum, zone, mapping
17 angles, ground-to-grid factor used, if using a
18 modified ground system. It's very specific.

19 So this is why the -- again, I just
20 emphasize that this is an issue for the Surveying
21 Committee. The Surveying Committee has discussed
22 this, and we feel that the language as it appears --
23 while Mr. Cooper is correct that some may have some
24 confusion to it, as Mr. Spirock has pointed out, if
25 that is clarified in an advisory opinion, then we

1 shall do so. But I don't see the inherent
2 difficulty with the language as it appears right now
3 in the minimum standards.

4 MEMBER TONANDER: If I may, then, I will
5 say a few things here. One, I believe the place for
6 this is the Surveying Committee. However if someone
7 didn't have satisfaction, if there were something
8 inherently wrong, it does need to escalate up to
9 this full Board. And I understand that, too. That
10 doesn't mean there's anything wrong. Just saying
11 "if."

12 I think an advisory opinion on it does
13 make sense, just as you both said, just as
14 Mr. Cooper indicated as well. There needs to be
15 clarification on that. That could only stand to
16 everyone's benefit, I think. And this is sheer
17 opinion on my part, but the three of you -- I
18 observe you take your jobs very, very seriously.
19 You're all very professional, and you frequently
20 disagree. So the fact that you're even this close
21 to agreement on this topic gives me some comfort.
22 All right? And if there's an advisory opinion
23 necessary to make it better for everyone, I think
24 that's probably the ideal outcome. So perhaps it
25 goes back to committee with that as an objective, as

1 an advisory opinion to be put together.

2 MEMBER THUROW: Then this Board should
3 refer it back to the PSC Committee.

4 MEMBER TONANDER: And I think that's a
5 fine outcome.

6 Mr. Burkholder, would you care to say
7 anything further on that?

8 MR. BURKHOLDER: Thank you for your
9 indulgence.

10 MEMBER TONANDER: I do hear a lot of
11 serious consideration of what you're saying, and it
12 doesn't sound like there's a technical break here.
13 It sounds like they understand what you're trying to
14 convey, and we just need to make sure that it's
15 clear. You do not believe that's true?

16 MR. BURKHOLDER: No.

17 MEMBER SAMORA: We appreciate the 1897
18 article, though. That's kind of cool.

19 MEMBER SPIROCK: Did you note the
20 definition of an equilateral rectangle?

21 MEMBER SAMORA: I haven't read it all.

22 MEMBER SPIROCK: If you read it all, I
23 think what Mr. Cooper said might be advised to
24 listen to, that it may be more a matter of
25 interpretation than a matter of technical specifics.

1 Because the particular bill that tried to redefine
2 pi to 3.9 talked about using equilateral rectangles.

3 MEMBER SAMORA: I didn't want to analyze
4 the article. I just wanted to say it was kind of
5 clever.

6 MR. BURKHOLDER: FYI, "The History of Pi,"
7 Peter Beckman, 1971, is a fascinating book to read,
8 it's available on the Internet. "The History of
9 Pi."

10 MEMBER SAMORA: "History of Pi."

11 MEMBER TONANDER: Anything further?

12 MR. BURKHOLDER: Thank you.

13 MEMBER TONANDER: Thank you. Moving on.
14 Director's report.

15 MR. VALDEZ: Mr. Chair, members of the
16 Board, we'd like to give a status report. We're
17 currently in the process of finalizing the online
18 renewal capabilities. Recently we were notified
19 that the renewal site needed to be upgraded and so
20 with that upgrade, the RLD's IT department is doing
21 the upgrade. And with that we'll need to do a
22 little bit more testing. We already did testing on
23 the old site, but given the deliberative testing,
24 therefore, an e-mail blast when the renewal
25 information is available, when they're able to renew

1 online, will be sent out. Tentatively it's
2 scheduled for November 14th. Hopefully sooner, but
3 tentatively the 14th, so that will give the
4 licensees approximately 45 days, I believe. And I
5 wanted to give that update.

6 As far as the second item, renewal notice
7 and continuance of USPS postage permit, again, I
8 wanted to give the Board an update on that issue.
9 And I'll also ask the Board chair and legal counsel
10 to aid in that as well.

11 So we had a meeting with RLD regarding our
12 renewal notice of the postage card, renewal card,
13 and the continuance of our USPS postage permit.
14 During that meeting, it was discussed and how we as
15 a Board are fiduciaries of the public's money, even
16 though we generate the revenue. So during that
17 conversation, it was decided that what we could do
18 as fiduciaries of this money is to send out the
19 renewal notice this year and next year, and then
20 from that point forward e-mail renewal reminders
21 instead of post cards. And I'd ask the Board chair
22 and legal counsel to weigh in or add to this report.

23 MS. POLI: Correct, Mr. Chair, and I met
24 with the keeper of the funds, and it appeared to be
25 a productive meeting, it seemed. Mr. Chair, you're

1 probably not familiar with -- I did go back to RLD
2 and had a meeting with head counsel because the
3 postage was again denied. So head counsel for RLD
4 and I agreed that to in order to serve the interests
5 of the Board and the financial causes of the
6 State -- and they're trying to tighten everything,
7 which is what the issue has been getting the postage
8 approved -- the movement of the Board toward not
9 having to have a postage expenditure is the goal of
10 RLD, and in order for us even to get what we got
11 this time for approval, we did agree to encourage
12 the Board to move towards no postage. So I want to
13 make it clear that it's a small thing, it's a small
14 amount of money in the scheme of things. It was
15 just a small amount of money. But it was very
16 difficult to get it approved. And the need to move
17 toward no postage is pretty important for us,
18 especially because it was the first push-back that
19 we got from RLD that we went to bat for, and if we
20 don't move towards that direction, I think it will
21 be difficult in the future to get expenditures that
22 you might want. I hope I have put that in a fashion
23 that's politically correct and you understand what I
24 mean. Any questions?

25 MEMBER THUROW: Yes, I have one,

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1 Mr. Chairman, if I may. The amount of money, to me,
2 seems irrelevant as much as the principle behind it,
3 which is that expenditures that are authorized by
4 this Board are in any way connected to RLD approval.
5 That is contrary to the memorandum of understanding
6 we have with RLD and it's also contrary to the state
7 law. So I'll leave it at that.

8 MS. POLI: If I may, Mr. Chair, Member
9 Thurow, that's the conversation that I had with head
10 counsel. It's important that we don't start a war
11 over it; right? You're right, it does say that.
12 The Board absolutely is authorized to make its own
13 financial decisions. That's what the statute says,
14 and that's what allowed me even to have a
15 conversation about it with the head counsel. And
16 the reality, however, is they do deny it. And I'm
17 going to defer to Perry to kind of explain a little
18 bit more about that. There are a lot of moving
19 pieces, I guess, because they are denying it. They
20 did deny it. The postage was denied, despite the
21 act.

22 MEMBER THUROW: On what grounds?

23 MS. POLI: On the grounds that -- Perry, I
24 need you to help me with the processes a little bit.
25 Ultimately, he has to get approval from a lot of

1 people higher up in RLD -- stop me if I'm getting
2 the process wrong -- in order to get it paid.
3 That's the reality. So because you have that in
4 your ability, we're able to get what we need. But
5 what is the name of that news guy that does these
6 commentaries?

7 MEMBER SPIROCK: Larry Ahrens?

8 MS. POLI: We don't want to be on the news
9 as a board wasting money when we don't have to,
10 which is what RLD is concerned about. It doesn't
11 look good, and we don't want to push for something
12 that we don't have to. But I'm now going to defer
13 to Perry to explain why we have to get approval.

14 MR. VALDEZ: So when we process a payment
15 or purchase order, we create a request for purchase
16 order, I sign off on it, or Annette, and then it
17 goes to RLD to their financial administrative
18 division, to a chief procurement officer. They're,
19 I guess, the first step that will look at it and
20 whether or not to approve it or not, and then come
21 back and say why they're not approving it or what we
22 need to do to get it approved. And then at that
23 point we comply with that, and it goes a little bit
24 further to another approval, or another approver.
25 And at that point also, if that individual does not

1 feel comfortable with it, we also have to go through
2 that process as well.

3 In this case, as Marylou stated, I did
4 have a conversation with -- a meeting, a
5 teleconference with the chief procurement officer
6 and their head counsel, legal counsel, in which the
7 legal counsel did advise me and also the chief
8 procurement officer.

9 MS. POLI: To clarify, it's the same
10 counsel that we're talking about, the same people.
11 He's talking about having to get that same attorney
12 back on the phone. Go ahead.

13 MR. VALDEZ: So during that conversation,
14 it was made clear not only to myself but also to
15 RLD, to their chief procurement officer, that
16 they're not there to dictate how we spend our money,
17 but to advise us. And so with that, and without
18 discussion, it was made clear as to what we needed
19 to do to show that as good stewards of the money,
20 what we're proposing and why we're proposing it and
21 how we're saving money, which I did. I provided all
22 the details, data, and quite honestly, it did show
23 that we as good stewards are saving money compared
24 to another way that that could have been processed.
25 Because I showed that if we ourselves printed the

1 renewal cards on our Xerox machine, how much that
2 would cost, and how much it would cost if we sent
3 those renewal cards to the mail room to put
4 individual postage on there. It would cost a lot
5 more money than what we're doing now by having a
6 third party print them and mail them with that
7 postage permit. Because that postage permit is for
8 bulk mail, which is a lower cost of postage. So
9 based on the data that I provided, it did show that
10 we were saving the State money. And so because of
11 that, they approved it.

12 MEMBER TONANDER: To clarify a point here,
13 I think the issue that the Board is having is that
14 there's a confusion between their duties as CFO as a
15 fiduciary adviser becoming, instead, some kind of
16 fiduciary regulator. And that's where we keep
17 bumping heads repeatedly. And we're looking to
18 maintain the autonomy that even with the Governor's
19 executive order we still maintain, and they have
20 some procedural setup that applies to other boards
21 that they're just seemingly imposing upon us because
22 that's just how they work.

23 MEMBER BOHANNAN: Mr. Chairman, can I ask
24 a couple questions?

25 Perry, prior to the executive order, did

1 you have to have any approvals from any other agency
2 within the state?

3 MR. VALDEZ: No. Well, we processed
4 everything internally and we sent it over to
5 Department of Finance Administration just like they
6 do. And if the Department of Finance Administration
7 had an issue with it, we would fix it and send it
8 forward. But this process is new to us, and is
9 frankly a bit lengthy compared to what we're used
10 to.

11 MEMBER BOHANNAN: Mr. Chair, I'd make a
12 suggestion, that we write a letter that states this
13 is in violation of our MOU and we send it in and
14 then we continue down the path. But what I would
15 like to do is start having a series of these issues
16 where there are violations of MOU, just document it.

17 MEMBER THUROW: Mr. Chairman, Ron, I'm
18 thinking in deference to Ben Franklin, should we --

19 MEMBER SPIROCK: You knew him, didn't you?

20 MEMBER THUROW: Yes. I'm up for a battle.
21 I'm just wondering if postage and mailing is not the
22 right battle.

23 MEMBER BOHANNAN: No, that's not my
24 intent. My intent is to move on. All I want to do
25 is just document that they violated our MOU.

1 MEMBER SPIROCK: Oh.

2 MEMBER TONANDER: Not necessarily
3 challenging it, simply noting it.

4 MEMBER BOHANNAN: Yes.

5 MEMBER TONANDER: We've observed that.
6 Yes.

7 MEMBER BRASHER: Mr. Chair, I think Perry
8 may already have a list of those -- you may be able
9 to categorize or name other areas where we have felt
10 all along that they have been operating contrary to
11 the terms of the MOU. Aren't there? Like that
12 phone answering the mail, that sort of thing?

13 MR. VALDEZ: However, that's no longer an
14 issue, now we're on the third floor.

15 MEMBER BOHANNAN: Mr. Chair, I'm not
16 trying to start down that path. I just want to
17 start a case file that says, "Here's an incident,"
18 so when it does come up, we will have a file of
19 instances where the MOU was not --

20 MEMBER TONANDER: I understand.

21 MEMBER GERSTLE: I'd like to be excused
22 from the meeting.

23 MEMBER TONANDER: Of course. Thank you
24 for spending your time to the last minute. And
25 again, welcome.

1 MS. POLI: And good-bye.

2 (Member Gerstle left the meeting.)

3 MEMBER TONANDER: One other thing I'll
4 note for the record, that although the counselor now
5 was talking fairly generously about RLD and how
6 those conversations went, in the meeting that
7 occurred, she was extremely defensive of the Board
8 and the Board's position, doing what you would pay
9 an attorney to do to defend this Board and its
10 rights.

11 MS. POLI: And to follow up, I haven't
12 dropped names, but the head counsel -- I couldn't
13 meet with her without having my top supervisor
14 there. And that I got a meeting with her, my
15 supervisor was, like, "What do you mean, you got a
16 meeting?"

17 I didn't realize how high I'd gone when I
18 requested it.

19 MEMBER SAMORA: Good for you.

20 MS. POLI: So that's coming from the top
21 of RLD, and I did -- thank you for pointing that
22 out, Mr. Chair. I kind of stuck my neck out there,
23 but luckily, somebody caught me before I really
24 buried myself. But the conversation went very well
25 with head counsel, and the two of us are trying to

1 kind of smooth things over with RLD staff and with
2 your Board staff and your Board, because the
3 impression that she and I have -- that would be the
4 RLD counsel -- is that the staff's communications,
5 especially coming from RLD to your Board staff, is
6 likely not being presented in a way that is being
7 received well by the Board. So that attorney's
8 going to work on the relationship. So the goal
9 really at this point, or at least an initial goal,
10 is for the parties to have a relationship so that
11 everyone's happy, and even though it kind of seemed
12 like a small point, it was big, and from my
13 impression it was a big step toward maybe things
14 getting better. They are, at the top, looking at
15 your statute and looking at your MOU now.

16 MEMBER SPIROCK: Hear, hear. Good job.

17 MEMBER THUROW: I'm satisfied with
18 counsel's activities and her efforts. I do still
19 have some reservations about both the memorandum of
20 understanding being ignored and being directed to
21 violate state law by not sending out the cards as a
22 requirement of the Engineering and Survey Practice
23 Act, I believe.

24 MS. POLI: Mr. Chair, Member Thurow,
25 actually we won. We won. So there is no law being

1 violated.

2 MEMBER THUROW: For two years.

3 MS. POLI: We'll see. It is the right
4 thing to do, to try to save money, and that is what
5 they're asking of us. And I have asked Perry to
6 make a huge effort to show them that we are making a
7 huge effort to save money in order to help repair
8 the relationship so that things will get better.
9 But we did win, because that is the law. That is
10 your statute, and that was the argument that I made.
11 But when I went to the top of RLD, I couldn't put it
12 in that fashion. Professional courtesy wouldn't
13 allow me to put it so strongly. At that point, it
14 was a meeting not to win, but to come to an
15 agreement. And that's what we did, and the
16 agreement was all in our favor.

17 MEMBER TONANDER: And as a side note here,
18 I'd say I do find it ironic that what we're trying
19 to do is keep our licensees licensed and the
20 revenues coming in, which they, in turn, sweep. So
21 a small investment on this part actually, you know,
22 provides a large gain back to them when we build up
23 a balance. So there is an irony there.

24 MEMBER MEYERS: And as another aside --

25 MEMBER SPIROCK: Mr. Chairman, at your

1 testimony in front of the Legislative Finance
2 Committee, in our meeting, which I believe was two
3 weeks ago, it seemed like we were in line behind
4 nurses and doctors and opticians but before tattoo
5 artists. But you were lauded, Perry was lauded, for
6 our budget requests and the presentation in front of
7 the LFC. So whatever you're doing, you're doing
8 something right.

9 MEMBER TONANDER: We'll probably talk
10 about that a little bit more with respect to the
11 financial report.

12 MEMBER MEYERS: I just was going to make
13 another ironic aside, that there's an inherent waste
14 of money going on just with those lengthy processes
15 that you have to go through every time. And I
16 appreciate the defense of us, of our governing body,
17 but I also feel like, you know, if there's a Larry
18 Barker story to be gotten out of all of this, it
19 would be just in the time that is spent trying to in
20 effect do our jobs of saving money. So the money
21 that's being spent on that side -- we tend to look
22 at what the public would see if they saw a Larry
23 Barker report. But I think it would make an
24 interesting letter to the Journal or letter to the
25 editor maybe from a past Board member someday, may I

1 suggest, about what's really going on from the other
2 perspective. And that's all I'll say about that.

3 MEMBER SAMORA: I'll be happy to do that
4 once I'm off the Board.

5 MEMBER TONANDER: Okay. Financial report.

6 MS. THOMPSON-MARTINEZ: My name is Annette
7 Thompson-Martinez, and I'm deputy director for the
8 Board. I will begin with the note that Cliff was
9 talking about, which was the budget hearing. And
10 that did go really well. I don't know if Perry and
11 Karl want to state anything about that, but I do
12 think that that was one of the first hearings I have
13 attended that definitely it was received really
14 well, the comments that were made. Do you want to
15 reiterate any of those statements, Karl?

16 MEMBER TONANDER: I will say I was
17 surprised when it came our turn to present in there.
18 Now, notably, there was one absent member of the
19 subcommittee at that point that I think was a
20 deciding factor on how it was received. But the
21 other presentations before ours were questioned
22 anytime there was a budget adjustment upward or even
23 maintaining the budget they'd had in years previous,
24 if they had not fully utilized it.

25 We went in there asking for more, and the

1 tone of the questions we received back is: "Why
2 aren't you asking for more still?"

3 They were very supportive. They
4 acknowledged that they had swept a large sum of our
5 money, they actually questioned whether our
6 reductions in fees was wise, so that we had such a
7 low balance maintained. And yeah, it was a
8 startling difference from the groups before us.

9 MEMBER SAMORA: Well, Mr. Chair, I'll add
10 that, yeah, we got that immediately from John Arthur
11 Smith and Larry Larranaga. They immediately -- and
12 especially John Arthur Smith said, "Yeah, you guys
13 contributed," you know, and talked about the
14 previous one and then the \$2 million. And so yeah,
15 it was really interesting, and it was nice to have
16 that acknowledgment. So we can let our licensees
17 know that they're contributing to the education in
18 New Mexico.

19 MEMBER TONANDER: And as in years past,
20 which I didn't attend, there were multiple members
21 of the Board there, visible in the room, which kind
22 of contrasted with some of the other groups as well.

23 MEMBER SAMORA: And they introduced us, so
24 it was good.

25 MEMBER BOHANNAN: Mr. Chair, I think

1 having -- and apologize for missing. I really tried
2 to get there, but I just did not. The previous I
3 think three years I have been able to testify in
4 front of the Commission, and I think what we need to
5 keep doing is keep showing that we are progressing
6 as a Board, still doing the things that we tell them
7 to do. And we told them last year, we were looking
8 at the fees and we did that. So all we're doing is
9 just reinforcing what we keep telling them.

10 And so I think what would be good is for
11 staff to kind of document that, so that if any of
12 the Board members -- so for continuity purposes, we
13 would forward that same story that gets moved
14 forward and again just say, "Look, this is what
15 we're doing."

16 MS. THOMPSON-MARTINEZ: On that note, I'm
17 also going to go into the fund balance that was
18 presented at the legislative hearing, and I will
19 address Karl because he did make the statement at
20 the budget hearing that we were swept more than what
21 the Board actually had in the fund balance, so it
22 did put us into a negative amount starting off this
23 fiscal year. I'm not sure how the numbers are
24 communicated to the Legislative Finance Committee,
25 but I will say that in Perry's presentation I

1 provided him with fund balance numbers, so he was
2 going off of my report, and he did state that there
3 was currently approximately \$148,513 in the account.
4 He was corrected at that point and said that it was
5 actually more than that. I think she claims 250.

6 So I'm not sure where the numbers are -- I
7 kind of think it has to do with the fact that the
8 reason why we were swept more is because they didn't
9 have the correct number to begin with, and that's
10 why there's that difference in amount.

11 So I am going to have a conversation,
12 Perry and I, with our legislative analyst to kind of
13 work that out, just to make sure that we're all on
14 the same page with numbers that are correct. So we
15 did verify these numbers with our chief financial
16 officer, who had worked closely with us on the audit
17 for this year, and I will state that Clayton
18 Pelletier has been extremely helpful to both Perry
19 and me during this process of the audit. And Karl
20 was there for the exit conference, so I will say
21 that some of the services we do receive from RLD --
22 which I will say the chief financial officer is so
23 valuable, I really appreciate his knowledge, and he
24 showed a lot of faith.

25 So I'll keep that short, but I want to

1 share that this number that you all have in front of
2 you for the fund balance is correct. It is the
3 amount that we currently have, and that number will
4 continue to change as we receive more revenue versus
5 our expenditures. So I will keep you updated as Ron
6 had wanted us to do that in the past.

7 MEMBER BOHANNAN: Mr. Chair, I have got a
8 couple questions.

9 Annette, two questions. One, you were
10 projecting a balance of about \$40,000 in the
11 negative and now it's \$12,550, is what you're
12 showing on page 2.

13 MS. THOMPSON-MARTINEZ: Yes. If you want
14 me to go into the projections for this current
15 fiscal year, going into that, do you want me to move
16 into that?

17 MEMBER BOHANNAN: Some of the other Board
18 members may, but my recollection was last quarter
19 you were projecting about \$40,000. Now we're about
20 \$12,000. And so my real question I want to ask is:
21 As we head towards renewals, we'll start having a
22 lot of late fees and those things. There was some
23 question about whether those fees would go to the
24 general fund or if they would go into our account.

25 MS. THOMPSON-MARTINEZ: No, those will go

1 into our account. I think what might be the issue
2 there is all of that money that's received is in a
3 deferred account. At the end of the year, our chief
4 financial officer moves them into the proper
5 account, to identify where they should be. I don't
6 know how to explain revenue.

7 MR. VALDEZ: I believe, Mr. Chair, members
8 of the Board, what Mr. Bohannan is referring to is
9 that one act where it stated that fines would go
10 into the school fund. That hasn't been made clear
11 to us as of yet, so we're still researching that to
12 find out where those funds will be going, if they
13 remain with the Board or if they go into the school
14 funneled. Once I have found out, I'll relay that to
15 the Board.

16 MEMBER BOHANNAN: Mr. Chair, Perry did you
17 say fine? Panel fees?

18 MR. VALDEZ: It just says "fines." That's
19 all it says is "fines." So we're not sure if it
20 means penalty renewals or just the fine that we
21 receive on disciplinary actions.

22 MEMBER TONANDER: As well, the
23 administrative fees that we're beginning to collect
24 on those funds? That's a third component. This
25 truly seems like it should come back since it's a

1 direct expenditure of ours.

2 MR. VALDEZ: But I'll research that and
3 give you an answer.

4 MEMBER THUROW: I concur, Mr. Chairman,
5 that those are expenses that are reflected in our
6 balance sheets, and if they are not offset by
7 recovering that revenue, then we are at a distinct
8 disadvantage.

9 MEMBER TONANDER: True.

10 MEMBER BOHANNAN: One other question.
11 Annette, I'm sorry, Annette and Perry, based on
12 this, I don't see any adjustments that need to be
13 made unless you guys are recommending something.

14 MS. THOMPSON-MARTINEZ: Yes, actually, if
15 you want, I'll start with the 200 category. And
16 what the amounts listed there reflect are based on
17 the fact that we currently do have one vacancy that
18 we are in the process of filling. This is
19 projecting with approximately, let's see here, 16
20 pay periods remaining, which there will be a little
21 bit more vacancy savings than that, but we wanted to
22 kind of give you guys an idea as to what that
23 category is going to look like, based off of these
24 projected amounts to the end of June. Now, that
25 number possibly could change depending on when we

1 hire and, you know, all the details of insurance and
2 all of that. But we will share the official amount
3 once we have that position filled. This is a
4 projected amount at midpoint for that range. And
5 based off of that, if we continue to stay fully
6 staffed, which we're praying that we do, it will be
7 \$19,825 that we are short in that category, which we
8 will need to borrow money. And I'll go through each
9 category and then I will suggest what we can do to
10 correct that.

11 So the next category is the 300 category,
12 which is our contractual services. And this is
13 projected to be short as well by \$3,647, and this
14 includes the projected amount for our investigators,
15 of course, our overhead costs pursuant to the MOU,
16 in addition to -- we have some projected amounts in
17 here for the website that we are -- they're hosting,
18 right? Our website through Abba? Through Real
19 Time. Abba is the one for -- okay.

20 So the other amounts that are in here are
21 for -- the company is really Constant Contact, which
22 goes through Abba Technologies, and because we're
23 sending out so many e-mail blasts, I know that the
24 Board has been in communication with you all about
25 seeing what our options are to enhance our

1 capabilities of, you know, effectively communicating
2 with our licensees, and I think this was something
3 that I know we've been researching for about, what,
4 two years now. And we did get a decent quote, which
5 was in the amount of about \$1,900, and that was
6 based off of the whole year, which means we can send
7 out approximately four to five blasts a month. Is
8 that what it is?

9 MR. VALDEZ: That's right.

10 MS. THOMPSON-MARTINEZ: So with that, I
11 can leave it on projections. You guys can decide if
12 that is something you do want to go forward with.

13 In addition to that, there's the One
14 Drive. I know you guys have also been looking into
15 that. We are hoping we can purchase a license which
16 will give us the capability to -- I don't know the
17 technical term. Host? What is it, Perry?

18 MR. VALDEZ: Supervise a cloud service to
19 provide more meeting documents to the Board. So
20 we're looking at that as well, because we ran into a
21 small problem with the Department of Information and
22 Technology, so we're looking at purchasing one
23 license for us.

24 The other thing is, to go back to the
25 Constant Contact program, it also allows for us up

1 to 12,000 e-mail addresses, which is similar to what
2 Texas does, Texas Board of Engineers. You receive
3 those newsletters, so it would be the same format.

4 MS. THOMPSON-MARTINEZ: And I do want to
5 share with you all, yesterday I did try to send out
6 the e-mail blast for the upcoming ethics course that
7 our chairman kindly provides to a lot of licensees.
8 And it took all day to send out the e-mail.
9 Literally at 5:00 it was on 4,000, I believe. So
10 this I think would really be an enhancement to
11 productivity. So with that, you guys can decide if
12 you want to continue to go forward with that.

13 The next category is the 400 category,
14 which is all of our operating costs. That, of
15 course, improved the Board meetings, which is line
16 item 5423, and I may have to project a little bit
17 more since there are more special meetings that will
18 be happening but we will continue to, you know,
19 project as needed in the areas that we have maybe
20 not projected enough for.

21 So with that being said, I don't know if
22 you want me to go into detail about this category,
23 but the overall balance, the 400 category will be
24 approximately \$10,000. Now, I did not include a
25 projected amount for some of the things that have a

1 role, such as I believe we do need to have some
2 maintenance done on the car. Perry mentioned it was
3 giving us some problems yesterday. So that may --
4 that amount may change. I'll let you guys know how
5 much, by how much.

6 Again, there may be some costs here for
7 additional items such as we're having some problems
8 with our printers. Some of them are just not
9 working very well. So we may need to upgrade some
10 of that. So we may not have that \$10,000, is what
11 I'm trying to tell all of you, by the end of the
12 fiscal year. But overall, we will need to do a
13 budget adjustment request of, technically speaking,
14 right now of \$12,550 because we don't have enough in
15 our budget to meet our needs at this point in time.
16 That number will probably increase unless for some
17 reason it decreases due to loss of staff or -- I
18 really can't predict the future. But --

19 MEMBER THUROW: No?

20 MS. THOMPSON-MARTINEZ: No, unfortunately
21 I can't. But with that being said, I do want to let
22 all of you know we do have the capability of pulling
23 5 percent from our fund balance, which I did share
24 with you guys. We do have money in our fund balance
25 as we speak. So if we need to pull the 5 percent

1 which we're planning to do, we will make that
2 request hopefully in the next -- by January we
3 should have a better projected amount as to what the
4 position was filled at and where we go from there.
5 So at that point in time, I will work with all of
6 you to see what amount should be pulled from the
7 cash balance.

8 MEMBER TONANDER: Member Bohannan.

9 MEMBER BOHANNAN: Mr. Chair, Annette, I
10 think we're actually entitled to go up to about
11 \$40,000 on adjustments.

12 MS. THOMPSON-MARTINEZ: Correct, 5
13 percent.

14 MEMBER BOHANNAN: Yeah, my suggestion is
15 in January we probably err on the larger amount so
16 that we actually do have a little bit of cushion as
17 opposed to having to do that.

18 MEMBER TONANDER: And/or proactively
19 replace some of these things that could be
20 maintenance items or just replacement?

21 MEMBER BOHANNAN: Right, and then we can
22 start looking at new equipment.

23 MR. VALDEZ: I wanted to clarify, the
24 \$40,000 is 5 percent of what the current budget is.

25 MEMBER BOHANNAN: Right. That's actually

1 \$39,895.

2 MS. THOMPSON-MARTINEZ: Correct.

3 MEMBER BRASHER: That 5 percent, tapping
4 the balance, is available once per fiscal year. And
5 we have not done that yet, I take it.

6 MR. VALDEZ: No.

7 MEMBER THUROW: And the request goes to
8 DFA?

9 MR. VALDEZ: Correct.

10 MEMBER THUROW: It does not go through
11 RLD?

12 MS. THOMPSON-MARTINEZ: Well, the
13 submittal of the budget adjustment does, because we
14 do have to go through the proper channels of
15 procurement, budget. So I will prepare the
16 document, but it will have to officially get
17 channeled through the proper individuals.

18 MR. VALDEZ: With that said, we have done
19 a budget adjustment request through that process
20 before, and it's never been an issue or been held
21 up. So just --

22 MEMBER THUROW: Thank you.

23 MS. THOMPSON-MARTINEZ: So there is some
24 light at the end of the tunnel. It looks like, you
25 know, I really was concerned about what the amount

1 appropriated for this year's budget was that was
2 appropriated by the legislature. But overall it
3 looks like we are going to make it work, hopefully.

4 MEMBER SPIROCK: Question for Annette,
5 just for my own future knowledge. Where in the line
6 item table is our investigator expense projected?

7 MS. THOMPSON-MARTINEZ: That is actually
8 under -- if you go right after Personnel Services,
9 it goes into Medical Services, the Professional
10 Services, which our original budget is \$60,000.
11 That is where the two investigator contracts come
12 out.

13 MEMBER SPIROCK: Both investigators are
14 projecting 30 grand?

15 MS. THOMPSON-MARTINEZ: Correct. And both
16 of those were done through a request for proposal,
17 so we were informed that we do have to continue with
18 that.

19 MEMBER BOHANNAN: What I'd suggest is
20 staff at the January meeting is to come through with
21 a proposed adjustment so we could make it a Board
22 item. And I would strongly encourage what the chair
23 has said, is to start looking at replacing those
24 items that need to be replaced. I would be a little
25 bit more proactive. Like I said, I would shoot for

1 closer to the \$40,000 than just meeting the balanced
2 budget.

3 MEMBER BRASHER: Mr. Chair, that 5 percent
4 is 5 percent of a number. How long is that income
5 good for, the 5 percent? It's still good for 5
6 percent? \$40,000, 39, whatever, and change, is
7 going to be good by the time this shows up in
8 January?

9 MR. VALDEZ: It's for an entire fiscal
10 year.

11 MEMBER BRASHER: Through July 1, okay. So
12 we can count on that still being the number?

13 MR. VALDEZ: Correct.

14 MEMBER TONANDER: As a question, waiting
15 until January, is that prudent given the legislative
16 session or are people going to have a poor demeanor
17 at that point due to our fiscal constraints?

18 MS. THOMPSON-MARTINEZ: Are you talking
19 about the upcoming budget hearings?

20 MEMBER TONANDER: Well, I'm actually
21 saying, do we want to put the request in so it
22 doesn't coincide with the legislature, so that
23 people just aren't unwilling to spend money at that
24 point?

25 MR. VALDEZ: When the legislature is on,

1 there's a moratorium on submittal simply because --
2 during the legislature, there's a moratorium on bar
3 submittals, so you either submit it prior to or
4 after.

5 MEMBER TONANDER: I'm suggesting perhaps a
6 little bit sooner, even, than where that window is
7 set.

8 MEMBER BOHANNAN: Mr. Chair, what I'd
9 suggest is instead of returning this to the Board,
10 let's refer this to the Executive Committee and have
11 the Executive Committee act on it as soon as staff
12 has it prepared.

13 MEMBER TONANDER: I can clarify my
14 comments later to Member Bohannan, I guess, is what
15 I'm saying.

16 MS. THOMPSON-MARTINEZ: Thank you. I will
17 be happy to submit the budget adjustment request of
18 however much you guys ask me to do it for.

19 MEMBER TONANDER: Okay. Licensing status
20 report.

21 MR. VALDEZ: Mr. Chair, members of the
22 Board, as you can see on your tablets, approximate
23 number of licensees as of October 27, 2017, there
24 was 8,887 licensees. Of that number, we have 8,377
25 active professional engineers, 493 active

1 professional surveyors, and 17 active dual
2 licensees. Currently, we have 1,369 retired
3 professional engineers, 142 retired professional
4 surveyors, and 142 retired dual licensees. As of
5 June 1, 2017, through October 27, there have been 38
6 EIC -- engineering intern certificates issued and
7 all of those through Engineers.

8 MEMBER TONANDER: Great. Questions?
9 Moving on to old business. 8A, use of
10 electronic signatures and seals.

11 MR. VALDEZ: Mr. Chair, members of the
12 Board, this was referred to staff to do some
13 research regarding this issue, and within your
14 tablets under that folder, under old business,
15 letter A, is the research that was found and shared
16 with the Board members prior to this meeting. With
17 that, I will --

18 MEMBER TONANDER: Comments, questions?

19 MEMBER BOHANNAN: Mr. Chair, I think this
20 is going to take a while to get through. As I think
21 I have told some of the public Surveying Committee
22 members, we established a separate committee to look
23 at design standards, as-built drawings. There's a
24 separate one. I think as the Rules Committee starts
25 to hopefully just take one more issue and then start

1 reducing its work load, I would suggest that the
2 signature, electronic signature and seals get placed
3 under the Rules Committee. But we're not going to
4 have a lot of active input on this until we get
5 through some of these other things. So I would
6 suggest that we could either table it and then we
7 can bring it back to the Board when we actually have
8 some substantive information. But what really needs
9 to happen is probably the Rules Committee needs to
10 come up and offer some language just for discussion.
11 That's about the only constructive way that we can
12 take the Board's time, so I'd be happy to continue
13 to do that.

14 MEMBER TONANDER: All right. I completely
15 agree, myself. Okay.

16 MEMBER SPIROCK: Mr. Chairman, there is an
17 existing advisory PD/PS that deals with electronic
18 seals, and that might be the place to start.

19 MEMBER BOHANNAN: And I agree. I think
20 that's a good place to start. What I am noticing is
21 there's a big disconnect between what is being
22 practiced and what the advisory is saying. There's
23 a real big disconnect.

24 MEMBER TONANDER: And much like what
25 you're alluding to, frankly, with the changes going

1 on with surveying and practice of surveying, the use
2 of electronic seals, same thing. It's evolving very
3 rapidly.

4 MEMBER SPIROCK: There are some of those
5 advisories that are PS/PE, which require some action
6 by the Board.

7 MEMBER COOPER: Are any of your
8 engineering firms transmitting electronic plats?

9 MEMBER TONANDER: Frequently.

10 MEMBER BOHANNAN: Yes.

11 MEMBER COOPER: Have you tried to deal
12 with the issue of the electronic signature and seal?

13 MEMBER BOHANNAN: Personally -- and I
14 think the Chairman can have his own -- we have been
15 transmitting plans electronically. The City of
16 Albuquerque is also accepting plans electronically
17 and processing permits electronically. Right now,
18 there's no method that I have seen in the processes
19 that we're using where you can verify it's an
20 individual signature. And so that's the issue. And
21 everything that I have also seen is, it's basically
22 a digital copy of a seal that is on the plans that
23 then gets put on a PDF and submitted as the permit.
24 We just had a hearing that we actually
25 issued an NCA and a violation and a fine yesterday

1 where that electronic seal was lifted and forged
2 onto a structural report. So it's a very serious
3 element, but it also creates a lot of thought and a
4 lot of discussion to this whole process.

5 MEMBER TONANDER: I actually have nothing
6 that would be of substance to add.

7 MEMBER SPIROCK: I may or may not be on
8 Ron's committee when it gets to it, but I have
9 looked carefully at those advisories and the
10 electronic seal as to how it might pertain to the
11 new provision of the act for digital geospatial
12 data, and I didn't want to address it too much until
13 I saw that that language survived the public
14 hearing, which apparently it has.

15 So when your committee gets to it, keep in
16 mind that there are metadata attached to certain
17 computer programs that might be a temporary fix to
18 address the authorship and accuracy of digital
19 geospatial data, but it doesn't address the issue
20 of, if you don't have that particular program, what
21 do you do, because there's nothing to affix your
22 seal to.

23 MEMBER BOHANNAN: It's a very complex
24 issue.

25 MEMBER COOPER: My question was -- I don't

1 know if I heard the answer -- is do you transmit
2 AutoCAD files to other design members, team members,
3 outside of your organization? Not PDFs but AutoCAD
4 files?

5 MEMBER BOHANNAN: We do. And that is a
6 big issue.

7 MEMBER COOPER: That's the issue we're
8 talking about, not talking about PDFs and things
9 like that. Anybody can make a scan of a signature
10 and seal off a PDF and replicate it in an AutoCAD
11 drawing. But --

12 MEMBER TONANDER: I think we are talking
13 about all of it, and including just scans, regular
14 scans. I know we do also send out AutoCAD outside
15 of house typically for staking -- construction
16 staking is most common -- and those don't have a
17 seal or signature on them. Those are removed before
18 we send them out, along with a giant disclaimer that
19 says this is worthless.

20 MEMBER BRASHER: Mr. Chair, Ron, when you
21 send a signature out, you stamp, you sign it, you
22 make a PDF of that. Is that what you're doing?

23 MEMBER BOHANNAN: Correct.

24 MEMBER BRASHER: And you attach it to the
25 CAD drawings when you send AutoCAD. Now, if you

1 have to have a stamp, that's how the person on the
2 other end of receiving your CAD drawing gets a
3 stamped --

4 MEMBER BOHANNAN: Right now there's two
5 methods of how we're sending out plans. One is a
6 PDF with a stamped, dated signature on that PDF.
7 And then the other method is an AutoCAD file similar
8 to what SMA is doing without a stamp or signature
9 and with a disclaimer that they're using that file
10 at their own risk.

11 The PDF version is going to the
12 municipalities for the permitting process, and it's
13 my interpretation that that still meets the Act.
14 It's an original signature with the engineer of
15 record date stamp on that plan covering the
16 discipline of the work.

17 The AutoCAD file, again -- and this is
18 where it's going to get real fuzzy as building
19 information management systems, or BIM systems,
20 start coming in, and you start sharing electronic
21 files, and then you start publishing a -- or you
22 start permitting a building set where you have
23 multiple disciplines, how does this Board approach
24 and say, "Okay, how do I distinguish the civil from
25 the electrical from the mechanical? And how is that

1 stamped and how are we tracking that the individuals
2 are, one, permitted; and two, practicing within the
3 license in their expertise?"

4 So like I said, it's going to be a very
5 complex issue. We can start here, but we're going
6 to get down in the weeds pretty quickly.

7 MEMBER COOPER: That was my question. Are
8 you doing BIMs?

9 MEMBER BOHANNAN: We are not.

10 MEMBER TONANDER: We are not.

11 MEMBER COOPER: You are not. So as
12 engineering Board members, you don't have a
13 practical experience on how to write rules and
14 regulations for this. Is that what you're saying?

15 MEMBER BOHANNAN: I don't have that
16 experience, but we'll probably reach out to folks
17 who have.

18 MEMBER COOPER: You're going to find out
19 from a surveying standpoint, it's not as critical
20 right now. Well, that's not necessarily true.
21 Right. That's not true, because it depends on what
22 line of work you're focusing on. So yeah.

23 MEMBER SPIROCK: Just two weeks ago, for a
24 subdivision of the State, a drainage authority, our
25 total work product was a georeferenced MXD file, a

1 georeferenced database, with the accompanying
2 metadata talking about specifications and
3 authoritative positions, which I have got to assume
4 our client is going to take and make it a component
5 of a BIM. So we're doing it right now with the
6 potential that that's what the client is going to
7 use the data for.

8 MEMBER COOPER: So did you secure that --
9 I'm sorry, Julie, go ahead. My apologies.

10 MEMBER SAMORA: I was just going to say
11 that I think this is a huge issue and we need to
12 really study it, and we need to think about future
13 ramifications. I think that we could spend, you
14 know, a lot of time discussing it now.

15 MEMBER TONANDER: And if we're not careful
16 we're going to. So I was going to reiterate the
17 last suggestion, which is to send it back to the
18 Rules Committee, and not to cut everybody out, but
19 just let's move on on this.

20 MEMBER BOHANNAN: Correct.

21 MEMBER TONANDER: Did you want to add
22 anything?

23 MEMBER BRASHER: No, thank you.

24 MEMBER TONANDER: Okay. 8B, proposed
25 changes to the Engineering and Surveying Practice

1 Arcs.

2 MR. VALDEZ: Mr. Chairman, members of the
3 Board, I placed this on the agenda because of a
4 request by Mr. Spirock, and I will let him speak to
5 that request of the proposed changes of the
6 Engineering Survey Practice Act in regard to the
7 years of experience.

8 MEMBER SPIROCK: Mr. Chairman, members of
9 the Board, this is a wild hare because I know that
10 the legislative session upcoming is a short session.
11 But as was previously discussed, we had a very
12 welcome reception with the Legislative Finance
13 Committee, and one of the members of that committee,
14 Mr. Larranaga, sponsored the bill last year, House
15 Bill 188, that survived because of changes to the
16 Engineering and Surveying Practice Act. In House
17 Bill 188 at the 11th hour, your Surveyor Committee
18 and this full Board voted to put legislative
19 amendments in play that reacted to CNM's request
20 that their work experience for a related science
21 degree be reduced from four years to two years,
22 making their total work tutelage and experience
23 under a surveyor six years as opposed to eight,
24 because they had students complain of a 13-year
25 career track education and experience, as opposed to

1 New Mexico State University or other universities
2 with a surveying degree which had a shorter career
3 track.

4 We took that to heart and drafted proposed
5 legislation that cut the four years to become a
6 surveying intern -- that's four years of work
7 experience -- to two.

8 At the Legislative Finance Committee I
9 mentioned that to Mr. Larranaga during a break, and
10 we also discussed other things, not in specificity,
11 but just as old friends. And I mentioned that CNM
12 was still looking for that amendment. He didn't say
13 yes or no. But by the shuffling of feet and the
14 winking of eyebrows and other things that friends
15 sometimes do, he suggested that it may be a
16 possibility in that brief seconds of discussion.

17 So I got to thinking, coming back, and I'd
18 asked that of our legal counsel at yesterday's PSC
19 meeting, what happens to a vote by this Board that
20 says, "Let's adopt this legislation, if we can, by
21 forwarding it to the right committee or the right
22 legislative sponsor, and at the 11th hour it says,
23 'Oh, we don't want to confusion the issue?' Okay.
24 Does that die, or is it still in effect?"

25 So I'm suggesting if we have the

1 opportunity to bite at that apple, we do. I have
2 included it under your proposed changes to the act
3 under old business, the language modifications, and
4 I am advocating it, but I don't want to upset the
5 apple cart. But if there's an opportunity, while
6 you have done such an excellent job with the sponsor
7 of the bill last year, maybe there's a chance this
8 year it's an opportunity.

9 MEMBER TONANDER: Do you want to --

10 MS. POLI: Thank you, Mr. Chair, members
11 of the Board. I just wanted to clarify that my
12 advice yesterday to Mr. Spirock and the Surveying
13 Committee for a couple of factors or a couple of
14 reasons was to go ahead and present it to the full
15 Board as a new vote because it sounded to me like
16 action had already been taken and failed for the
17 previous vote. That's the main reason.

18 MEMBER SPIROCK: Before Ron jumps in, if I
19 might mention, just the day before yesterday I
20 received a letter, so did Mr. Thurow, and hopefully
21 Mr. Cooper, by Mr. Forstbauer at CNM saying, "We're
22 under evaluation to see if our program in surveying
23 should continue."

24 And I blanched at that. But he's
25 requesting letters of support as early as next week,

1 I believe Tuesday, to be received by CNM as to
2 whether their Board of Governors should or should
3 not continue their surveying program. Mr. Thurow is
4 closer to that. I don't think it's an imminent, you
5 know, throw-it-out, but it's a portent of what might
6 come.

7 MEMBER BOHANNAN: I'm not an expert at
8 getting legislation passed at the State, and go
9 ahead and please chime in. But we're almost too
10 late to start. It's a short session, which means
11 the only thing that can be introduced is what is
12 introduced by the Governor. So for us to get even
13 introduced, we'd have to go to the Governor's
14 office, get that introduced, and then I'm sure Larry
15 would sponsor it again if we could get on the
16 agenda.

17 MEMBER SPIROCK: If I can get an
18 invitation, I'd be pleased to go to Santa Fe.

19 MEMBER BOHANNAN: My suggestion is, let's
20 go ahead and be prepared to bring that. We can take
21 it to the Rules Committee, bring it back in front of
22 the Board, because the process is that either we go
23 back and visit what the Board approves on the
24 previous rules adoption -- or excuse me, the
25 legislative adoption, and have Marylou look at that

1 and say, "No, it's already been approved by the
2 Board." Then we can turn that into a piece of
3 legislation that we can move forward.

4 The downside to that is, we open up the
5 act. And we know that when we open up the act, that
6 it has unforeseen consequences. And we made a lot
7 of changes last year to that act. I'm in full
8 agreement to do whatever we can do get more
9 survivors, but does it make more sense to take next
10 year and wait for the full 60-day session and make a
11 concerted effort to do it at that point? I'm ready
12 to do it either way, if the committee wants to go
13 one way or the other.

14 MEMBER TONANDER: Mr. Thurow, do you wish
15 to add anything? Particularly because of the
16 community college question and the legislative.

17 MEMBER THUROW: Well, very briefly,
18 Mr. Chair, thank you, the program at CNM is under
19 evaluation, as are all programs at CNM that have low
20 enrollment. At this point they are asking the dean
21 of the program, Amy Ballard, what are they doing to
22 increase the numbers and how are they going to turn
23 that around? So letters of support from the
24 industry are important. Also the Surveying
25 Committee voted yesterday to send a letter by the

1 PSC committee supporting the program at CNM.

2 Concerning the four-year to two-year
3 requirement, I'm still in favor of that, and I was
4 when the act was opened in the 2016 legislature.
5 But now that the act has passed without that
6 provision from four years to two years, I, like
7 Mr. Bohannan, am very leery about touching that act
8 again in the foreseeable future. Not that I don't
9 support the change, but it's just I don't want to
10 bring that act back to the legislature at this point
11 in time. I'd rather just let it lie, as you say, at
12 least until the next full session, but not try to
13 effectuate a change in the short session coming up.

14 MEMBER COOPER: I take it if we're
15 proposing this language cleanup, instead of a change
16 in the act, it might be more well received. I can
17 understand your concern about the act, but I don't
18 think they're going to do anything with it,
19 personally. I think the benefits outweigh anything
20 that might come up, instead of waiting another two
21 years, but it's a full Board decision. If we want
22 to move forward looking into it, I think we should
23 vote right now on it, put it to bed. If the vote is
24 against it, then we won't worry about it. We've all
25 got other things to do. So if we vote now to move

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1 forward, let's do it. And if not, Cliff and I will
2 zip it.

3 MEMBER SPIROCK: Call the question.

4 MEMBER TONANDER: One last thing I would
5 like to add, though, as far as the concerns of what
6 might happen if we open it up, which is always where
7 I am, because I don't know what they're thinking, we
8 do know one thing they're thinking. Change out for
9 another public member. Because that had to get
10 stripped out of the changes the last time. So that
11 is one that we would have to keep our eye on, that
12 element of it, at least, if we were to move forward.

13 MEMBER BOHANNAN: Mr. Chair, it wasn't
14 stripping out a member. It was exchanging a
15 technical member with a public member.

16 MEMBER TONANDER: Correct. I guess I was
17 thinking that language had to be stripped back out
18 to keep us where we're at. But yes, that's one
19 thing that we have to be acutely aware of.

20 MEMBER COOPER: I believe we should call
21 the question, and let's do it. If not, we'll move
22 on.

23 MEMBER SAMORA: Mr. Chair, we can call the
24 question, but just keep in mind that it would be --
25 the question would be: Do we take it before the

1 legislature? But there's no guarantee that we can
2 make it happen. We would just make an attempt to do
3 that.

4 MEMBER COOPER: That's the question. That
5 is correct.

6 MEMBER TONANDER: Okay. So shall we put
7 that in the form of a motion?

8 MEMBER SPIROCK: Mr. Chairman, I move in
9 the matter of item 8B that we reintroduce to the
10 appropriate legislative committee the language or
11 similar language that was petitioned in November of
12 2016.

13 MEMBER TONANDER: There's a motion. Is
14 there a second?

15 MEMBER BRASHER: There's a second.

16 MEMBER TONANDER: Okay. Any remaining
17 discussion?

18 MEMBER SAMORA: That was a big motion. So
19 what does that -- what was that again? Basically
20 what you're presenting here?

21 MEMBER SPIROCK: Yes. The initial one
22 last year was to change one word, one hyphenated
23 word, "four-year" to "two-year."

24 MEMBER SAMORA: Basically trying to
25 change --

1 MEMBER SPIROCK: I looked at it and what
2 the example is here is to change that and to strip
3 the other references to it, so that it speaks for
4 itself. No reason to continue it twice more in the
5 same paragraph.

6 (Simultaneous crosstalk.)

7 MEMBER SPIROCK: If it doesn't explain
8 itself, Julie, I should withdraw the motion.

9 MEMBER SAMORA: Well, I was waiting to
10 talk. No, so we would present it like this, to say,
11 hey, it's a simple change. It's not just to clean
12 up the language; it's a very specific change, but we
13 have a reason for it.

14 MEMBER TONANDER: In talking with counsel,
15 I'm probably going to ask that the motion be
16 rescinded and then restated for clarification.

17 MEMBER SPIROCK: How is the motion stated
18 now?

19 (The record was read by the reporter.)

20 MEMBER TONANDER: And the clarification
21 there is, the language or similar language.

22 MEMBER SPIROCK: Correct. I could add the
23 citation to it.

24 MEMBER TONANDER: Bingo.

25 MEMBER SPIROCK: I get credit on both

1 sides.

2 MS. POLI: Mr. Chair, thank you.

3 Mr. Chair, members of the Board, we're retrieving at
4 the moment the actual language from the motion in
5 2016, so that Member Spirock can just read it.

6 MEMBER SPIROCK: The motion by the
7 Professional Surveyors Committee for information
8 purposes reads, "To amend the Engineering and
9 Surveying Practice Act section, 61-23-27.3,
10 certification of surveyor intern. Paragraph E. So
11 that the language be changed from four years to two
12 years to read as follows: If otherwise qualified, a
13 graduate of a Board-approved but related curriculum
14 of at least four years to be considered for
15 certification as a surveyor intern shall have a
16 specific record of two years of combined office and
17 field Board-approved surveying experience obtained
18 under the direction of a licensed professional
19 surveyor. Class time will not be counted in the two
20 years of required experience, but work prior to or
21 while attending school may be counted towards the
22 two years of required experience at the discretion
23 of the Board."

24 MEMBER TONANDER: Am I to understand that
25 you are replacing what you previously had as a

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1 motion with the language you just read? "Yes" is, I
2 believe, the answer, I hope.

3 MEMBER SPIROCK: Yes.

4 MEMBER TONANDER: Does the seconder accept
5 that?

6 MEMBER BRASHER: I didn't understand that.

7 MEMBER SPIROCK: I didn't, either.

8 MEMBER BRASHER: I didn't understand it
9 that way, so I withdraw as the seconder.

10 MEMBER SAMORA: I'll second it. Okay.

11 MEMBER TONANDER: For purposes of
12 discussion --

13 MEMBER SAMORA: You made a motion, I'll
14 second it.

15 MR. VALDEZ: Just to make a note for the
16 Board, that was from the minutes, full Board minutes
17 of January 27, 2017.

18 MEMBER TONANDER: Member Brasher.

19 MEMBER BRASHER: I didn't understand that.
20 I did not understand that as in the motion.

21 MEMBER TONANDER: Okay.

22 MEMBER COOPER: Mr. Chair, my suggestion
23 was only to vote to whether to move forward. We all
24 know what the issue is. What needs to be changed
25 only if we want to move forward and open up the

1 Practice Act, I think that is the key question, is:
2 Does this Board believe that moving forward is worth
3 the effort, with what may happen with opening up the
4 Practice Act? I don't think we need all the other
5 stuff in the motion because we know where we're
6 going.

7 MEMBER SAMORA: I think the motion is
8 appropriate. If we vote yes on the motion, then
9 we're saying we're going to go to the session and
10 we're going to open up the act, I believe.

11 MEMBER TONANDER: So if I might, Counsel,
12 we need to be specific as to what it is we're
13 opening it up for. That was what was added to that.

14 MEMBER COOPER: Okay, great.

15 MEMBER TONANDER: But the question remains
16 whether it's prudent to open it, and that will be
17 part of that overall motion.

18 MEMBER BOHANNAN: Mr. Chair, I think I'm
19 leaning towards opening and doing this for a couple
20 of reasons. What I'm hearing from the PSC yesterday
21 had zero applications, zero interns. We need to do
22 whatever we can to promote surveying in this state.
23 This is a positive state to do that. I want to be
24 clear with the legislature, though, that this is not
25 just to clean up language. This is truly promoting

1 the surveying profession within the state of
2 New Mexico. And if we move forward with the state
3 legislature, we want to say we are doing this
4 because we need to promote more surveyors in the
5 state.

6 MEMBER TONANDER: It is also supportive of
7 the educational system in our state.

8 MEMBER BOHANNAN: Correct.

9 MEMBER TONANDER: So with that, I think we
10 are ready for a vote.

11 MEMBER COOPER: Call the question.

12 MEMBER TONANDER: Are we going to have
13 dissension on this measure?

14 MEMBER THUROW: You will.

15 MEMBER TONANDER: Can we have a roll call
16 vote?

17 MR. VALDEZ: Karl Tonander.

18 MEMBER TONANDER: Aye.

19 MR. VALDEZ: Ronald Bohannan?

20 MEMBER BOHANNAN: Yes.

21 MR. VALDEZ: Augusta Meyers?

22 MEMBER MEYERS: Yes.

23 MR. VALDEZ: David Cooper?

24 MEMBER COOPER: Yes.

25 MR. VALDEZ: Julie Samora?

1 MEMBER SAMORA: Yes.

2 MR. VALDEZ: Glen Thurow?

3 MEMBER THUROW: No.

4 MR. VALDEZ: Cliff Spirock?

5 MEMBER SPIROCK: Yes.

6 MR. VALDEZ: Paul Brasher?

7 MR. BRASHER: No.

8 MR. VALDEZ: Mr. Chair, we have six yeses
9 and two no's.

10 MEMBER TONANDER: Okay. Motion passed.

11 MEMBER SAMORA: Okay. Shall we take a
12 break?

13 MEMBER TONANDER: Yes, let's take a
14 ten-minute recess.

15 (Recess from 11:58 a.m. to 12:10 p.m.)

16 MEMBER TONANDER: All right. We are
17 reconvening. It's 12:10 on the clock on the wall.
18 We are on item 8C, Nevada-Wyoming licensing MOU.

19 MEMBER BOHANNAN: Mr. Chair, this has been
20 an item that I have been tracking, and I just ask
21 staff to reach out to Nevada and Wyoming and find an
22 update. At the national meeting in Miami, I asked
23 them -- they actually had a formal signing in Miami,
24 and so it's actually law. And I came up to them I
25 said, "Okay. I'm licensed in Nevada. Does that

1 mean I become automatically licensed in Wyoming?"

2 And they kind of scratched their heads and
3 they said, "We're not sure."

4 So I think it's just something they wanted
5 us to entertain going on the MOU with them. I think
6 there are still some problems with that. I think at
7 this time we just get a staff update in January and
8 we just keep monitoring it.

9 MEMBER TONANDER: Okay. Thank you for the
10 report.

11 9A, new business. Now, review of policy
12 advisories.

13 MR. VALDEZ: Mr. Chair, members of the
14 Board, I placed this on the agenda at the request
15 from Mr. Glen Thurow.

16 MEMBER THUROW: Yesterday the PSC
17 Committee, as Mr. Spirock has mentioned earlier,
18 reviewed all of the advisory opinions and policies
19 pertaining to surveying, and we've found that we
20 needed to revise many of them and archive others
21 that have already been addressed elsewhere in the
22 subsequent years since their introduction. So some
23 of these advisory opinions also pertain to the
24 engineering side, and I only placed it on the agenda
25 so that the Engineering Committee may be aware that

1 it may be time for them to review those advisory
2 opinions and policies pertaining to engineering that
3 could stand further scrutiny.

4 MEMBER SAMORA: I don't have a comment.

5 MEMBER TONANDER: Looks like it's being
6 tossed to you.

7 MEMBER SAMORA: Sounds to me like it's
8 part of the Rules Committee. That would be -- oh,
9 is that a PEC thing?

10 MEMBER TONANDER: I think that's what I'm
11 hearing there, is PSC has --

12 MEMBER SAMORA: Maybe we should look at
13 that as PEC, because Rules is kind of getting
14 overloaded. Okay.

15 MEMBER THUROW: We're not forcing you to
16 do it, but simply bringing it up that we have
17 undergone some revisions.

18 MEMBER TONANDER: Are there any of
19 immediate concern that were involving PEC?

20 MEMBER THUROW: For instance, one of the
21 advisory -- or actually it was a policy referred to
22 a \$100,000 public works projects, and since the law
23 no longer reflects that, I believe it should be
24 removed from the advisory opinion.

25 MEMBER SAMORA: We'll take a look at it.

1 MEMBER THUROW: That sort of thing.

2 MEMBER TONANDER: Sure. Thank you.

3 MEMBER SAMORA: Thank you.

4 MEMBER TONANDER: 9B, NCEES Western Zone
5 attendance. I requested Perry to at least put this
6 on there. Traditionally we at least consider who
7 should be going representative of New Mexico.

8 MEMBER BOHANNAN: This is in Scottsdale;
9 right?

10 MEMBER TONANDER: No, this is in that
11 far-away place.

12 MEMBER BOHANNAN: This in the H-word.

13 MEMBER SAMORA: Mr. Chair, can I just make
14 one comment on the meeting thing? I just want to
15 refer everybody to the travel policy that we adopted
16 back in 2014. In fact, Paul Brasher actually signed
17 it. And I think the travel policy is, it's pretty
18 good. It just gives us a system. And if you look
19 on it, I think it's appropriate to put it on here,
20 because we need to be thinking about this, but it
21 says, "Upon notification of an NCEES meeting, the
22 Board member wishing to attend as a Board delegate
23 shall submit a request on the Board's travel request
24 form." We may not even have a form, but we can
25 certainly get one. "Then the Executive Committee

1 shall approval such delegates after first
2 considering the following travel criteria."

3 And then we go through criteria. And I
4 think we thought through this, and I'm not going to
5 read it, but we agreed that we would send not more
6 than five delegates, because we were trying to work
7 with RLD. And I recognize that we haven't been able
8 to even do that. But I just think it's important to
9 keep going back to that. And we talk about
10 sufficient representation. You know, we have to
11 make sure that we have an engineer and a surveyor,
12 if possible. We certainly want to have staff. We
13 talk about the committees. We talk about new
14 members. You know, so I don't want to miss out on
15 those things. Like Walter Gerstle, for example.
16 He's a new Board member. He, I believe, will be
17 funded, you know.

18 So I just want to make sure. I think it's
19 great to go around and see who wants to go or who
20 can go, but I also would just refer you back to this
21 travel policy. And I also think, you know, we
22 should push as much as we can, if we can get beyond
23 just funded, let's do it. This one is going to be a
24 tough one.

25 MEMBER TONANDER: Amen.

1 MEMBER SAMORA: So anyway, I want to
2 comment on that. I think it's a good policy, so we
3 should refer to it. Maybe we can have that up on
4 the resource, so we have it. That's it for me.

5 MEMBER TONANDER: Based on Julie's
6 comments, I would ask the Executive Committee to
7 identify people at the soonest opportunity to make
8 sure we don't miss this one.

9 MEMBER BOHANNAN: Mr. Chair, I would
10 suggest going around the room and see who would like
11 to go. That's usually how we've done it. And then
12 I would suggest that the Executive Committee and
13 staff submit those requests as soon as possible
14 because this one is going to be tough.

15 MEMBER THUROW: Mr. Chairman, if I
16 remember correctly, NCEES will now fund three
17 members and any new member to the annual meeting.
18 So my question is: How many funded members would we
19 actually be allotted? Just two?

20 MEMBER TONANDER: Two and new.

21 MEMBER SAMORA: So we'd be able to fund
22 three.

23 MEMBER THUROW: Two and who? And the new
24 member. So it would be three funded members. And
25 didn't 2018 signify the change in NCEES policy from

1 two to three members? If I remember the motion from
2 the August 2017 -- or 2016 meeting, that this
3 funding -- that the amount of funded members was
4 increased by one, so wouldn't that be three funded
5 members plus the new member? And this is something
6 I would like to qualify, before perhaps you could
7 contact Sherrie Saunders and ask her for when that
8 takes effect. Perhaps it was not until 2019. But
9 it seemed to me that the number did increase and
10 that it was effective in 2018. The Western Zone
11 meeting obviously will be in 2018, so if that is the
12 case, we should fully utilize the number of funded
13 members that are made available to us.

14 MEMBER TONANDER: Definitely true.

15 MEMBER SAMORA: The other question I have,
16 the funded member -- we don't have funds to be able
17 to send our executive director or staff, because we
18 should be able to do that, aside from that. If we
19 send them, do we have to use one of the funded? So
20 at this point, we have to use one of the funded
21 okay. Or two of the funded, as it would be. Okay.

22 MS. POLI: Mr. Chair, for the record,
23 could we please note that Perry answered in the
24 affirmative, when he nodded his head to your
25 question?

1 MEMBER TONANDER: Yes. You would have to
2 use one of the funded delegates to send staff as
3 such.

4 MEMBER SAMORA: How do we document that?

5 MEMBER BOHANNAN: Mr. Chair, do we have
6 any budget to send anybody else?

7 MS. THOMPSON-MARTINEZ: Mr. Chairman, Ron,
8 I will tell you that the budget appropriation does
9 include out-of-state moneys for that purpose, for
10 attendance at the NCEES. I believe that was the
11 actual justification that we put in the
12 appropriation request K, which was approved by the
13 legislature. But again, we've been informed that we
14 will only get approved unless it's funded and not
15 used by the state money.

16 MEMBER TONANDER: I would state the
17 obvious. The optics of this one are poor.

18 MEMBER SAMORA: This might not be a good
19 one to try on.

20 MEMBER TONANDER: However, the national
21 meeting, Tempe in August -- not as attractive,
22 perhaps. We may be able to use our power on that.

23 MEMBER BOHANNAN: Miami was only 103. I
24 don't know what you guys are complaining about.

25 MEMBER TONANDER: So to your point, you

1 had asked to get a quick census of who might be
2 available and interested.

3 MEMBER BOHANNAN: And I'm not going to
4 toss my hat in the ring, because I don't want to go
5 through that emotional roller-coaster with the
6 governor's office.

7 MEMBER TONANDER: Okay.

8 MEMBER THUROW: I don't want Larry Barker
9 calling me. No.

10 MEMBER SPIROCK: Well, I don't subscribe
11 to NCEES as earnestly as you people do, so even if I
12 was available, even if it was funded, I'd feel like
13 it would be a sham. So no.

14 MEMBER SAMORA: Well, I would concede to
15 others as well. If we get to a point where we don't
16 have enough people, you know, let's just make sure
17 that we just do it, that somebody goes. I would
18 also say if we can send a couple of staff members,
19 then we could do that as well. But let's definitely
20 take advantage of the three-plus-the-one. Let's
21 inform Walter Gerstle, see if he's able to go. Or
22 the two plus the one, so I mean, that's fine, you
23 get a sense, and then the Executive Committee can
24 kind of think about what we want to do.

25 MEMBER TONANDER: Augusta?

1 MEMBER MEYERS: I have actually liked
2 going to the Western Zone meetings, but like Julie
3 said, I'm more concerned that staff be able to go
4 and that we don't lose any position. So if it's in
5 May -- which it typically is; right?

6 MEMBER SAMORA: It's in May, I think.

7 MEMBER TONANDER: This one is early.

8 MEMBER MEYERS: May is kind of busy for
9 me. But I will remain open to it.

10 MEMBER SAMORA: I'm not going to turn down
11 anything, but let's wait and see.

12 MEMBER THUROW: I concur. I'd like to see
13 staff go, our deputy director and director. But
14 even if they're funded, I can see them having a
15 problem getting approval, even if they're funded.
16 So let's keep this in mind, that this would be
17 Walter, of course, as the new member, should he care
18 to go, and the staff. But if it looks like it's not
19 going to happen. And hopefully they'll be told
20 prior to the day of the flight, that then we have --
21 the Executive Committee make alternative choices, as
22 long as we are sure to fill all of the funded
23 positions in one way or another.

24 MEMBER SAMORA: Yes, we want to take
25 advantage, make sure we fill them. I agree. Good

1 point.

2 MEMBER MEYERS: Yes.

3 MEMBER TONANDER: I'm going to put myself
4 in for rotation this time, because I have held out
5 on the funded.

6 MEMBER SAMORA: I think that's a good
7 idea. I think you should go as funded.

8 MEMBER TONANDER: You just want me in the
9 Governor's office, don't you?

10 MEMBER SAMORA: No, no, I think you
11 should. You haven't been funded for a while. I
12 think you should do it, and you're the chair.
13 You're the chair. So I think you're absolutely
14 right. You should do it.

15 MEMBER TONANDER: What about just on an
16 off chance here, what about the question of counsel?
17 Because counsel does attend. If we're asking the
18 question --

19 MEMBER BOHANNAN: We're entitled to five.

20 MEMBER BRASHER: Let's ask counsel the
21 question.

22 Would you be interested and available?

23 MS. POLI: Yes.

24 MEMBER BRASHER: Let the record show a
25 yes. We should have a surveyor.

1 MEMBER TONANDER: Mr. Cooper.

2 MEMBER COOPER: Oh, are you asking me?

3 Who went to the last meeting?

4 MEMBER THUROW: The last Western Zone
5 meeting? I went to Miami. Yeah.

6 MEMBER SPIROCK: I went to Williamsburg,
7 Virginia, 2015.

8 MEMBER COOPER: That was my last one, too.

9 MEMBER SAMORA: That's the annual one,
10 though. The Western Zone.

11 MEMBER COOPER: Augusta, you went when?

12 MEMBER MEYERS: To Denver.

13 MEMBER SAMORA: Denver last year.

14 MEMBER MEYERS: What was the one before
15 that? Okay. Sorry, I was going back too far.
16 Denver.

17 MEMBER COOPER: As the last alternative,
18 yes, I will. I would say yes. I agree that staff
19 should go, Walter should go.

20 MEMBER BOHANNAN: Much to the chagrin of
21 my wife, no.

22 MEMBER BRASHER: I'll make myself
23 available, I think, provided counsel would go and
24 the staff would go. But I'd let them go before me,
25 so that we don't lose a place.

1 MEMBER TONANDER: I do have a question.

2 MEMBER SPIROCK: If Dave flakes out, put
3 me on the list.

4 MEMBER TONANDER: Okay. That is Ron's
5 call. I do have a question for Perry, though. I
6 had thought that for new members it was both a zone
7 and a national.

8 MR. VALDEZ: Correct.

9 MEMBER TONANDER: And if you have never
10 gone to a zone before, does Cliff still have a
11 credit?

12 MEMBER SAMORA: I think you have to be a
13 new member within a year.

14 MEMBER TONANDER: So maybe it's expired.

15 MEMBER SAMORA: It's a brand-new member.

16 MEMBER TONANDER: Again, I wanted to take
17 advantage of what we can.

18 MEMBER BRASHER: Mr. Chair, there are five
19 slots?

20 MEMBER SAMORA: Not really, no.

21 MEMBER BRASHER: Is five the number?

22 MEMBER TONANDER: No. At best, it is
23 three plus Walter. At worst it is two plus Walter.

24 MEMBER BRASHER: Okay.

25 MEMBER SAMORA: So we're looking at three

1 to four. But you got a general sense, so that's
2 good.

3 MEMBER TONANDER: Okay. So that's back to
4 the Executive Committee to follow up once Perry gets
5 the information on how many slots. All right.
6 Thank you.

7 Committee reports. Now we can rock and
8 roll.

9 MEMBER THUROW: Mr. Chairman, I'll make my
10 report very brief.

11 The committee met yesterday at the
12 workman's compensation building as the Engineering
13 Committee did. As I mentioned earlier, we reviewed
14 advisory opinions. We also got an update on our
15 mail-out exam, our mail-out state-specific surveying
16 exam. The number that has been sent out to date is
17 14, if I remember correctly, and so we're expecting
18 some good things from that.

19 Additionally, I provided an update on the
20 NMSU program, and the status, and I can report that
21 CNM and NMSU are coordinating very closely with each
22 other in an attempt to bolster both programs.

23 Mr. Ron Forstbauer, who is the surveying instructor
24 at CNM, is now an adjunct professor at NMSU, and is
25 working on putting the first online surveying class,

1 SUR285, online. So that is moving in a positive
2 direction, and we hope to realize some benefits from
3 it in the very near future.

4 We also considered some disciplinary
5 cases, and we accepted a hearing officer's report
6 and had a report from our investigator concerning
7 his actions with the AG's office.

8 We only had one application, a PS
9 endorsement for reconsideration, and no change was
10 made from the earlier decision not to approve the
11 application for comity. That in essence is
12 yesterday's meeting.

13 MEMBER TONANDER: Thank you very much.

14 MS. POLI: Mr. Chair?

15 MEMBER TONANDER: Ms. Samora.

16 MEMBER SAMORA: For the PE committee, we
17 had a lot of old business where we were talking a
18 lot about sealing of preliminary design drawings, of
19 as-builts. The NMDOT attended the meeting and Paul
20 Brasher and Ron Bohannan also brought up just the
21 issue of using standards, you know -- NMDOT standard
22 and then using it on -- other folks kind of using
23 that for different purposes.

24 So to make a long story short, we had a
25 lot of discussion on that, and so rather than assign

1 that to the Rules Committee, we assigned it to a
2 special subcommittee or a special committee, and
3 that committee is going to be headed up by Ron
4 Bohannon. Paul Brasher will be a member, Walter
5 Gerstle, and Karl Tonander as a sub. And that will
6 keep us away from our quorum, and they're going to
7 develop some more specific charges and have those
8 charges, you know, to kind of keep us focused on
9 what we're going to be doing there. And that
10 subcommittee will involve agencies, NMDOT, the City
11 of Albuquerque, NMED, and consultants. And so it's
12 going to be a little bit of a process, but it just
13 keeps coming up over and over again. So I think it
14 will be a very productive committee, and that's why
15 we wanted to make it a special committee.

16 We talked a little bit about the whole
17 foreign degree, because the EI certification came
18 up. We addressed that. We had recommended
19 applications for review. We, unlike surveyors, are
20 fortunately getting many, many applications. We
21 went into executive session and discussed several
22 disciplinary cases, and we addressed several
23 applications that are still -- that we're clearly
24 clear on, and we actually only made it through about
25 half of them. So we made a decision to do a special

1 PEC meeting on November 15 at 9:00 a.m. in
2 Albuquerque to complete the remaining application
3 reviews. And I believe that is it.

4 MEMBER TONANDER: Would Counsel like to
5 add anything?

6 MS. POLI: Yes, Mr. Chair, members of the
7 Board. Hopefully I won't be too vague, because this
8 is actually something that came out of executive
9 session yesterday, but there was a motion made and
10 approved that I want the surveyors to be aware of,
11 so this is for the benefit of everyone. The motion
12 was made regarding a complaint. A motion was made
13 and approved for Perry to negotiate a settlement
14 agreement with the respondent and if there was no
15 signed agreement by a specific date, then it would
16 automatically be referred for an NCA to the AG's
17 office.

18 So this is all new to you surveyors. It
19 was new to the engineers yesterday in executive
20 session. It was a proposal made of mine. It's
21 something I have been watching for because this
22 Board -- there are other boards in kind of the same
23 position of you all, where there are a lot of cases
24 going -- complaints going to the AG's office, and
25 for various reasons we're losing them to statute of

1 limitations time limits.

2 So this is a method that -- I won't say
3 it's been created by the AG's office, but the AG's
4 office, like this Board, is concerned about the
5 number of cases that are falling through the cracks
6 because of time constraints, and budget affects
7 that.

8 So what cannot happen is the members of
9 the Engineering Board cannot -- nor can I -- have
10 any involvement with that settlement negotiation
11 process. So that means two things. The Attorney
12 General's Office will have a template for Perry to
13 use, but it also means that we need somebody else to
14 assist Perry for this process who's not on the Board
15 and not myself.

16 And it was the consensus of the Engineer
17 Committee that a member of the Surveying Board
18 assist Perry. And going forward, as we become
19 comfortable and like this process, then the
20 surveyors do the same courtesy to the engineers.

21 I would like -- just because of location
22 and time, the feedback I have gotten is that Glen
23 might be the most available to assist Perry. A
24 motion isn't needed for that, but I want you to be
25 aware. And we don't have much time to delay this

1 process. In other words, next week I'm hoping that
2 you can meet with Perry to go through this. And it
3 would be something in person. Hopefully you could
4 set up a meeting with him and respond.

5 I can take questions on it, but if the
6 questions come close to violating the executive
7 session, then I won't answer it.

8 MEMBER SPIROCK: The positive
9 recommendation, Marylou, was that the engineers can
10 refer for early settlement if possible, then an NCA,
11 if not possible; and they should refrain from adding
12 any specifications to that motion. And then if
13 approved, then a member of an opposing committee
14 that's not on that would then be available to flesh
15 out the type of settlement?

16 MS. POLI: No, that doesn't sound right.

17 MEMBER BOHANNAN: Let me take a shot at
18 it. This is all hypothetical. So we're going to go
19 through the hypothetical. So we get a complaint, it
20 gets investigated, the Board, either Board, can then
21 say, "No, this rises to an NCA."

22 And so instead of sending the NCA directly
23 to the Attorney General's Office, this is an
24 intermediary step where you appoint a negotiator.
25 Well, what we discussed yesterday was for the

1 Engineer Board. Eventually we would like to have
2 somebody from the Surveying Board be our negotiator
3 and then conversely, if you started doing the same
4 thing, an engineer would be available to be your
5 negotiator.

6 That negotiator sits with the respondent
7 and says, "Okay, here's the case we have against
8 you. The Board has authorized me to offer an early
9 settlement agreement with you."

10 You put in specific time frames to say you
11 have that time frame to negotiate an early
12 settlement. If that person says no and a settlement
13 can't be reached, then the negotiator is directed to
14 submit the NCA directly to the Attorney General's
15 Office and it follows the normal process. If they
16 say no, we reach an early settlement, then a
17 settlement agreement is crafted through your office.
18 Right, Marylou?

19 MEMBER BRASHER: The negotiator has in
20 hand a template of a settlement agreement; right?
21 This is the settlement agreement. Sign it or not.
22 And then negotiate back and forth the settlement
23 amount, but --

24 MEMBER SPIROCK: I think I got it. The
25 reason my response was probably convoluted, and I

1 apologize, was at our executive session, we had a
2 case where we had --

3 MS. POLI: I need you to stop. I have to
4 be careful.

5 MEMBER SPIROCK: I'm not going to -- we
6 had a case where there was an investigator that had
7 a report, and our instructions at that time were to
8 pass it on without further elaboration, which we
9 did. And I'm wondering how you get from "without
10 further elaboration" to a draft settlement agreement
11 or even understanding the concept without looking at
12 that report, without going and digging deeper,
13 without reinventing the wheel, et cetera.

14 MS. POLI: Okay. Thank you. Mr. Chair,
15 Member Spirock, this is a test case. We're trying
16 something that is going to be more effective, no
17 doubt, that's going to be more effective, so it's
18 one case. And that's why you had different advice
19 from me.

20 MEMBER SPIROCK: Okay.

21 MS. POLI: They got the same advice for
22 every other case.

23 MEMBER SPIROCK: And I like the way this
24 is going from the engineering side, and I certainly
25 subscribe to Mr. Thurow and your recommendation that

1 he be the adviser or prenegotiator or whatever you
2 call it. I could ask, when you get your mind
3 settled as to what is the most effective and easiest
4 way, that you publish a crib sheet, much like you
5 have with making motions, because I think that's a
6 good approach.

7 MS. POLI: Thank you.

8 MEMBER BRASHER: Mr. Chair, just to make
9 sure I understand it and they all understand it,
10 where this comes from is the desire, the tendency of
11 judges to want lawyers to negotiate before
12 litigating. Isn't that right? Isn't it that the
13 court system would like to see that something had
14 been negotiated rather than just dictated to
15 somebody? Is that partly where this comes from?

16 MS. POLI: Mr. Chair, Member Brasher --
17 what he's referring to is the general legal concepts
18 that are really imposed on all attorneys. And
19 government attorneys like myself are held to a much
20 higher standard. And that is the expectation that
21 the parties, especially if one of the parties is
22 unrepresented, that the government attorney will
23 take extra careful steps to come to an agreement
24 without going to litigation or hearing. So in the
25 spirit of attempting to settle things, when the

1 Respondent wants to settle, that's what this is
2 about. It's about moving it more quickly, not
3 having to have the prosecutor attorney engage in the
4 settlement process. The AG's position is that this
5 would likely move things more quickly. So --

6 MEMBER SPIROCK: I went through an --
7 actually became a certified arbitrator and mediator
8 through Construction Dispute Resolution. I don't
9 practice that as an income stream, but I'm
10 available. How does mediation arbitration fit into
11 this responsibility of trying to settle before the
12 fact of litigation, or does it not?

13 MS. POLI: Mr. Chair, Member Spirock, it
14 doesn't. Mediation and arbitration -- it is
15 something that's voluntary. It can be ordered, but
16 mediation and arbitration as you have described it
17 is oftentimes ordered or mandated by a court,
18 typically district court or suggested by a court.

19 Here, this would be where both parties are
20 voluntarily attempting to eliminate the possibility
21 of going to a hearing. That's really what it is.
22 Because a referral for an NCA is a possibility of
23 going to a hearing. And you don't necessarily need
24 the prosecuting attorney to come to an agreement
25 with a respondent who is willing to negotiate.

1 This particular case, just the facts of it
2 made it a very simple case to get the committees
3 used to and to get the staff used to. So that's why
4 it's not that the Engineer Committee had special
5 treatment over the surveyors, because that certainly
6 wasn't it. We have an opportunity to do better, and
7 so this is just one step in the process of making
8 things better without doing a full-blown change.

9 MEMBER SPIROCK: Sure. I understand and I
10 would only suggest that you add to your process a
11 voluntary mediation as something in the kit bag that
12 could be pulled out if the person -- that is, the
13 defendant in the complaint or potential complaint --
14 doesn't like the governmental process as prescribed
15 by settling with an oversight that they may have
16 issue with, that you could say, "Oh, you want to
17 mediate this? We have different boards, you know.
18 Arbitration board. We have these three things. We
19 could go to voluntary mediation. You got to pay the
20 nickel, but it might simplify negotiated settlement
21 if that was" --

22 MS. POLI: Mr. Chair, Member Spirock, the
23 respondent, in order for this not to be referred to
24 the Attorney General's Office, would have to be
25 wanting to settle everything. So oftentimes when a

1 mediator -- almost always when a mediator becomes
2 involved, it's because the parties really are very
3 far apart in that process and the Court wants them
4 to get closer together, doesn't want a trial. So I
5 think that if we have -- in fact, I'm certain if we
6 have two parties that are far apart, then the
7 settlement negotiation should cease and we have a
8 time limit for statute of limitation reasons. So I
9 don't think that we can fit in a professional
10 mediator at this stage, anyway, in that process,
11 because the AG's office doesn't have anything set up
12 there. It's a possibility that on a case-by-case
13 basis we could go that direction.

14 MEMBER SPIROCK: Okay.

15 MEMBER TONANDER: Mr. Cooper.

16 MEMBER COOPER: I'd like to attend that
17 meeting with Glen and Perry, if possible, so that we
18 would have somebody in Santa Fe and Albuquerque
19 both. I'm in Santa Fe every day of the week so if
20 something came up, I would like to at least be on
21 that group of -- or your team there to see how it's
22 going to work out, if that would be acceptable to
23 you.

24 MEMBER THUROW: I have no objection to
25 your participation, Mr. Cooper.

1 MEMBER TONANDER: Not necessarily speaking
2 for the engineers, but I think we're happy with
3 whoever would want to be part of that from the
4 Surveying Committee. It's a resource that hopefully
5 we'll get to use.

6 MEMBER COOPER: So if you can set up that
7 meeting like on a Tuesday or Thursday, that works
8 best for me. Those are the days that I have full
9 office days, instead of working out in the field.
10 Otherwise, I won't be able to make it.

11 MEMBER THUROW: So let's make it on a
12 Wednesday.

13 MEMBER COOPER: Okay. Good to me.

14 MEMBER TONANDER: We've exhausted that.
15 10C, Executive Committee.

16 MEMBER BOHANNAN: The Executive Committee
17 has not met since the last time, but we'll be
18 meeting between now and the next meeting.

19 MEMBER TONANDER: Great. 10D, Joint
20 Practice Committee.

21 MEMBER SAMORA: The Joint Practice
22 Committee met on October 12th, and that committee is
23 made up of -- I'm chairing it, currently chairing
24 it. Glen Thurow is the professional surveyor
25 member. We've got Bob Calvani from the architects,

1 George Radnovich from the landscape architects.
2 Those are the folks that showed, that came. And
3 Martin Romero with the Construction Industries -- or
4 yeah, construction bureau chief.

5 We kind of go through and talk about what
6 each of the groups is concerned with, and the
7 dominant discussion from all of them is just the
8 architects were looking at really trying to make
9 their roles more in line with their model law,
10 similar to what we do with the architects. They're
11 really all over the place, they said. And
12 deregulation is a big deal. They're always feeling
13 threatened by, you know, folks outside saying, "Hey,
14 why are you licensing, making it difficult to
15 license people? Why do we need this type of thing?"

16 So one of the things that came out of that
17 that I wanted to point out was that we all talked
18 about preparing some legislative talking points,
19 just like a one-page letter or one page, you know.
20 With the legislature you always want to keep it
21 short, and we've done this before, so we can revamp
22 what we did last year, and I'll be happy to take
23 this on. Why we exist, what we do, that type of
24 thing, so that when you are in front of a
25 legislator, you have the same messaging. And we

1 talked about sharing that with them, with the
2 architect. Here's what our white paper looks like,
3 and with the landscape architects.

4 So I think we need to do that and I'll
5 take the lead in doing ours, because I know we've
6 already looked at something and we have something in
7 place already, because we've been going up there.
8 So we talked about that.

9 A lot of the new business was just a lot
10 of things. CID, Martin Romero brings up a lot of
11 things. He had a really interesting thing about
12 design drawings being subject to IPRA requests, you
13 know. I thought this was interesting. He said,
14 "What if you get a request for something that is a
15 specific design?" He mentioned the Scientology
16 building, you know. So somebody's trying to get a
17 design drawing and they're going to get all the
18 details of that building. At what point do you let
19 that information -- you know, is that public, you
20 know? Is everything public, or is there some
21 disclosure or some restriction on that? Because
22 somebody could be looking at, you know, the way
23 their buildings are built.

24 And he even talked about Hollywood stars.
25 You know, they don't want people being able to get

1 in and get their plan sets.

2 So I thought that was just interesting.
3 We didn't really resolve anything. But he said he's
4 been getting some requests that he's starting to
5 wonder if it's appropriate for some of those to be
6 open to the public. So I know that's probably a
7 whole other discussion. I just wanted to kind of
8 bring up the interesting things that come up.

9 We talked about incidental practice and
10 kind of clarified things with them about what our
11 law says. We talked about architects' seals on
12 structural lumber, you know, stuff like that. So we
13 were getting things that we hadn't normally thought
14 about.

15 We set the next date and location of the
16 meeting to be January 24th, up in Santa Fe, so we
17 can kind of do a session discussion there. And I
18 just want to point out that if you go to the
19 website, you'll find this on Board information,
20 Joint Practice Committee, it really needs to be
21 updated. So Perry, hopefully you can update that
22 with the last minutes, the June 9 minutes. And you
23 know, I don't know where the draft minutes are for
24 August, but if we could update that, get on there,
25 and you'll be able to pull up the minutes and you

1 can at least see what we talk about. But I find it
2 to be useful.

3 Anything else on that, Glen?

4 MEMBER THUROW: No. Thank you.

5 MEMBER SAMORA: That's it.

6 MEMBER COOPER: Question, Julie. Did the
7 architects talk much about unlicensed practice?

8 MEMBER SAMORA: Did they? I don't
9 remember a lot of talk about that.

10 MEMBER COOPER: I'm curious, because I
11 quite often get building plans that don't appear to
12 be certified by architects. Somebody's -- they do
13 CAD design and drafting, and it's for some steak
14 house and it's got everything on it, but no
15 architectural seals.

16 MEMBER SAMORA: No, I don't believe they
17 really talked about that.

18 MEMBER COOPER: Thank you.

19 MEMBER TONANDER: 10E, Public Information.

20 MEMBER MEYERS: We have not met since the
21 last time, but at the Chair's direction, we will be
22 meeting to do something with the newsletter before
23 the end of the year. So I'll be contacting members
24 of the committee.

25 MEMBER TONANDER: 10F, Rules and

1 Regulations.

2 MEMBER BOHANNAN: We just finished and now
3 we're going to go tackle the new legislative update
4 for the surveyors, electronic seals, and signatures.
5 So we'll continue down the road.

6 MEMBER TONANDER: Right back on it. 10G,
7 Legal Enforcement Committee.

8 MEMBER SPIROCK: We have had no meetings,
9 but we might be available if Marylou comes up with a
10 crib sheet. If we can phrase it appropriately, the
11 committee might want to take that on as something to
12 assist her and these two boards in particular, but
13 perhaps useful in other boards to come up with a
14 crib sheet that doesn't get anybody in trouble, but
15 still allows us more effective communication with
16 the AG.

17 MEMBER TONANDER: Great. And NCEES
18 Committee members. Let's see. Me and Julie.

19 MEMBER SAMORA: I'll start. I'm on the
20 EPE committee. That's the exam committee. It's a
21 three-year term and we basically go and spend a
22 couple days in Atlanta. Next week we'll be doing
23 that, where we actually get reports from all the
24 exam committees. And a big thing that is really
25 happening there is the conversion of the engineering

1 exam to computer-based testing. So it's just
2 constantly talking about that and doing the
3 references, but it's a very fun -- it's a fun
4 committee. We don't really do anything, go to
5 exciting places, but it's still fun.

6 So that's pretty much what I'm doing. And
7 I get to be involved with a lot of the different
8 boards, which is kind of nice.

9 MEMBER THUROW: Make sure you mention,
10 Julie, when you get there and it gets to the
11 tightknit closeness of NCEES, about the progressive
12 nature that you mention, our mail-out exam. It
13 started out as an NCEES computer-based testing
14 model. Shouldn't surveyors adopt that for state
15 exams?

16 And then if you recall, I looked at not
17 only NCEES but other computer-based technology.
18 Perry assisted in looking at other computer
19 technologies that could be purchased, going all the
20 way down the line to try to find what's
21 cost-effective, and it ended up being South Dakota's
22 mail-out model. So I'm pleased to report that
23 Perry's implemented that, and maybe there's another
24 state out there that can save a whole bunch of
25 bucks, forgetting the hand scanners and the Pearson

1 VUE.

2 MEMBER SAMORA: We can ask. It's a little
3 unusual for that.

4 (Simultaneous crosstalk.)

5 MEMBER TONANDER: Member Brasher.

6 MEMBER BRASHER: Mr. Chair, Julie, is the
7 structural exam automated?

8 MEMBER SAMORA: No. The structural exam
9 will -- I don't believe that is going to go to
10 computer-based testing. I need to double-check
11 that, but everything else is on track to go to
12 computer-based testing. I think the chemical
13 engineering one is -- they are going as they're
14 ready. Their reference materials are a huge part of
15 that and the civil exam, and take a little bit
16 longer, but they actually have timelines. I don't
17 think the structural is going to that, but I'll
18 confirm that.

19 MEMBER TONANDER: Perry, did you want to
20 add --

21 MR. VALDEZ: Mr. Chair, members of the
22 Board, from what was reported to us at the NBA
23 conference, the PE chemical exam is the first exam
24 to go computerized, and that's currently available.
25 Civil will be one of the last exams to be

1 transitioned to computer-based.

2 And in response to the structural exam,
3 they are looking into that, but I believe what Julie
4 said, that it may not be computer-based, but they're
5 looking into that, into that exam discipline.

6 MEMBER SAMORA: It's a two-day exam. It's
7 just a lot. It's just a different type of makeup
8 and it lends itself more to doing the whole
9 calculation. But anyway...

10 MEMBER THUROW: Just from the Education
11 Committee, we've received our charges from President
12 Tami, and we will be meeting in January. The usual
13 suspects are still part of that. Position statement
14 35. But I would also recommend if you have not had
15 a chance to peruse this issue, the October issue of
16 the License Exchange, please do so, because it has
17 an excellent summary of the actions that were taken,
18 including a motion that passed to develop an
19 in-depth module for surveying in the public land
20 survey system. And this is a longer-term goal, but
21 it was felt that the professional practices exam
22 does not adequately address the rules and
23 regulations that one encounters in doing surveys
24 within the public land system. And not to be
25 outdone, the eastern states wanted to have a metes

1 and bounds module and in order to get the PLSS
2 module, I think we all had to sign onto the metes
3 and bounds module, even though this personal member
4 thought that metes and bounds often are a part of
5 the public lands survey system. However, this is a
6 longer-term goal.

7 President Tami has appointed a task force
8 and they will be looking at the efficacy of
9 developing these modules. That's it.

10 MEMBER BOHANNAN: And a note: President
11 Tami is a surfer.

12 MEMBER SAMORA: Passionate.

13 MEMBER THUROW: He is from a western
14 state? California, if you consider California still
15 a part of the United States, which I do.

16 MEMBER TONANDER: So Law Enforcement,
17 which is the one I'm on. We're meeting in December.
18 Charges have already been out, contributing through
19 the exchange for, oh, gosh, two months now.

20 There's a couple of issues that I will
21 bring back after the discussion in December, once
22 they're actually settled, once there's a direction
23 on them. But they do kind of pertain to things that
24 we do. One of them, for example, is social media.
25 Maybe a minor issue, but social media both for

1 evidence collection on investigations and then also
2 for people that may be portraying themselves as
3 engineers or professional engineers, representing
4 themselves as such, but providing public opinion on
5 things where they're really not qualified.

6 So there's a couple of different twists to
7 that, as one example. But there's 11 or 12 charges,
8 I think, from Law Enforcement. It's a pretty long
9 list.

10 MEMBER BOHANNAN: Mr. Chair, are you going
11 to be able to get the information from the Oregon
12 case? Will that be available soon when you go to
13 your meeting?

14 MEMBER TONANDER: I do not know. But I
15 will --

16 MEMBER BOHANNAN: That would be a good one
17 to bring back to the Board, which is basically a
18 violation of freedom of speech, a case that has been
19 brought up in Oregon. Just briefly, there was an
20 engineer, there was an individual who testified in
21 public that provided engineering calculations. The
22 Oregon board brought a case and fined this
23 individual. He accepted the fine, then turned
24 around and sued in federal court under freedom of
25 speech, and so that case is going through the court

1 system, as well. Something we should watch pretty
2 closely.

3 MEMBER SPIROCK: Surveyors are becoming
4 fewer. You might expect a discrimination case.

5 MEMBER BOHANNAN: This is another point
6 for why we should all go to the Western Zone
7 meetings and national meetings. You do pick up all
8 of these bits of information that affect how we do
9 our Board business.

10 MEMBER TONANDER: And that transitions
11 well to 10H, number 1, which is annual meeting
12 report. Do you have anything you care to add to
13 that?

14 MEMBER BOHANNAN: No, I don't.

15 MEMBER TONANDER: Member Thurow, do you
16 have anything?

17 MEMBER THUROW: Just as I cited earlier
18 from the Licensure Exchange is an excellent summary.

19 MEMBER TONANDER: Perry?

20 MR. VALDEZ: Pretty much what I mentioned
21 about the exam and also the push for the survey
22 module, and the exams. I don't recall anything else
23 that was a major importance of ours.

24 MEMBER TONANDER: I also attended on my
25 own, with a nod to Member Spirock. I occasionally

1 get concerned with what I view as the excesses of
2 NCEES at these events. But the value that they
3 provide in terms of getting together with other
4 board members, other states' board members, and then
5 in cases like this, I find it worth it to put my own
6 money in to go.

7 MEMBER SPIROCK: From my last experience,
8 that was the most, underscored, rewarding part of it
9 was sitting down with other surveyors from other
10 boards and having a communal meeting. What I did
11 not enjoy was being included on an electronic list
12 for the Northern Mariana Islands for a particular
13 vote and all the hoopla that went with that.

14 MEMBER TONANDER: Fair enough. Okay. My
15 understanding is, we do not have need of executive
16 session at this point?

17 MS. POLI: That's correct.

18 MEMBER TONANDER: Okay. So 11 and 12 move
19 off the agenda. Next scheduled meeting date,
20 January 12, back in Santa Fe. Are we going to be at
21 RLD or at our annual meeting at the Round House, or
22 has that been determined? The 12th, never mind.
23 RLD. Got it.

24 MEMBER BOHANNAN: Are we going to be in
25 our conference room or downstairs?

1 MR. VALDEZ: Just depends on which
2 location we get.

3 MEMBER TONANDER: Okay. Personally, I
4 prefer the larger rooms.

5 MEMBER BRASHER: Mr. Chair, the meeting
6 date is scheduled January 12, 2017. That's what it
7 says.

8 MEMBER TONANDER: 2018. Yes. I'm not
9 looking at the latest agenda here.

10 MEMBER MEYERS: You had your coffee today.

11 MEMBER TONANDER: Thank you for the
12 clarification.

13 MEMBER THUROW: Is that the actual date?

14 MR. VALDEZ: The 12th.

15 MEMBER BRASHER: The 12th is a Friday?

16 MEMBER TONANDER: Okay, we are agreed it
17 is the 12th. In that case, we are set to adjourn.
18 Thank you.

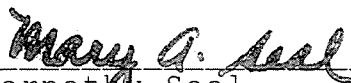
19 (The board meeting adjourned at 1:00 p.m.)
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25

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

SS

3
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