MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
333 Guadalupe St., Tower Three, Room 100
Austin, Texas
November 20, 2015, 9:00 a.m.

Call to Order, Establish Quorum, Introductions and Comments from the Public
The meeting was called to order at 9:20 a.m. Present was Jon Hodde, Chair, Board members Bill Merten, Jerry Garcia, Paul Kwan, Mary Chruszczak, Drew Paxton, Davey Edwards, Jim Cheatham and Mark Neugebauer. Also present was Executive Director Marcelino A. Estrada, Assistant Attorney General Harold Liller, and Board staff.

The chair asked the members of the public in attendance to briefly introduce themselves and then opened the floor to comments from the public but none were made.

1. **Approval of the August 28, 2015 minutes**
The Chair called for approval of the minutes of the August 28, 2015 meeting. Mr. Garcia moved to approve the minutes. The motion was seconded and carried unanimously.

2. **Director's Report**
a. *Strategic Plan*
i. Mission Statement
Mr. Estrada told the members that he would be working on the strategic plan and was interested in any input the members may have regarding the Board's mission statement: "The mission of the Texas Board of Professional Land Surveying is to establish and enforce standards ensuring the competency of individuals licensed as land surveyors resulting in the orderly use of our physical environment for the protection of our citizens, the current and future owners of Texas." He asked members to review the statement in their workbook and submit comments to him at a later date.

b. *Surveyor of Record*
i. *Alabama Board Certificate of Authorization information*
Mr. Estrada included in the workbook information submitted by a surveyor who thought the Board might be interested. In discussing certificates of authorization for firms and individuals, the Alabama Board discussed remotely supervising office locations. Since this Board had recently been discussing "direct supervision", members might be interested in this article. This concluded Mr. Estrada's report.

3. **Complaints**
a. *Closed or Dismissed Complaints*
Mr. Billingsley, Board Investigator, informed the Board that there were no closed or dismissed complaints to present but did have a list of open complaints if members were interested. Mr. Billingsley reported that there were 81 complaints open.

b. Informal Settlement Conferences / State Office of Administrative Hearings (SOAH)

i. Complaint 14-08

Mr. Estrada reminded members that at the last Board meeting, the members requested that the Agreed Order for Complaint 14-08 be modified. Mr. Kwan had also requested past complaint history on the subject surveyor. Mr. Estrada said that a check of Board records found two complaints in 1996, 1997 where the subject surveyor had been reprimanded with no penalty but there were no details other than the complaint was boundary related. A copy of the amended agreed order was provided in the member's workbooks. The chair called for a motion to approve the agreed order. Mr. Garcia moved the order be approved, Ms. Chruszczak seconded the motion. Mr. Kwan asked if Mr. Billingsley could restate the facts of the complaint. Mr. Billingsley stated that the complainant filed the complaint because they felt the subject surveyor failed to locate the property corner that adjoined his property in the correct location. After an investigation, it was determined the subject surveyor had violated Rules 663.16(a), (b), and (c) relating to Boundary Construction, when he failed to delineate the senior deed of 1931 when establishing the boundary of the subject tract and failing to hold a call for adjoiner over a call for distance; failed to acquire the necessary deeds to delineate the subject boundary; and failed to ensure research of adequate thoroughness to support the determination of the location of intended boundaries of the land parcel surveyed. The subject surveyor violated Rule 663.17(d), relating to Monumentation, when he set 5/8 inch rods at the four corners of the subject property without indicating on the original and the revised survey that they were marked in a way that is traceable to the responsible registrant or associated employer. The subject surveyor also violated Rule 663.19(4), relating to Plat/Description/Report, when he stated on his survey plat, "All bearings and street right of ways are per recorded plat." There is no record information given to identify the plat and no mention of a monumented line. Mr. Kwan noted that the penalty would be a reprimand and an administrative penalty of $6,800. A vote was taken and the agreed order was approved unanimously. The Chair read the subject surveyor's name into the minutes: Fred Lawton, RPLS #2321.

ii. Complaint 14-30

Mr. Billingsley stated that the adjoining land owner filed this complaint because he felt that the common line established between his property and the property his neighbor purchased and had surveyed. There was a bulkhead at the back of the property and because of the location of the line and it being 10 feet off, the neighbor tore out the complainant's bulkhead and another bulkhead. The subject surveyor violated Rule 663.16(5), relating to Boundary construction, when he failed to calculate and hold the correct angle from the right-of-way to construct the common line between the properties, choosing to hold the arc dimensions of 39.27 feet for the back line of complainant's lot. The subject surveyor also violated Rule 663.19(a), (c) and (d), relating to Survey Drawing/Written/Description/Report, when he failed to show the relationship between the record bearing and distance and the measured bearing and distance of the common line and when he stated bearings are based on the recorded map or plat and he failed to include the firm registration number on the survey drawing. The agreed order calls for a reprimand and an administrative penalty of $3,000. Mr. Estrada noted that at the last Board meeting, members had asked for it to be reevaluated concerning the boundary construction/dignity of calls and those violations were added. Mr. Merten moved to approve the agreed order. The motion was seconded and approved. Ms. Chruszczak and Mr. Garcia abstained from voting because they served on the ISC committee.

iii. Complaint 14-21

iv. Complaint 14-22

Mr. Estrada informed the members that though Informal Settlement Conferences were held for complaints 14-21 and 14-22, these items are pending.

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v. Complaint 13-22

vi. Complaint 14-10

Note: Complaints 13-22 and 14-10 were overlooked during the Board meeting and will be brought before the Board at its next scheduled meeting.

vii. Complaint 15-20

Mr. Cheatham reported that he and Mr. Merten were on the ISC committee for this complaint. The complaint involved a surveyor who was asked to assist his client with getting a legal description for an easement across an adjoining landowner's property. The subject surveyor did not use the word "proposed" and at some point later in the transaction, the survey was used for an improper purpose. The surveyor had done his due diligence; there was no attempt to mislead anyone. The subject surveyor violated Rule 663.19(7), relating to Plat/Description/Report, by failing to annotate on his drawing any reference to a deed by which this easement, as it was described, was located. The Committee felt it merited a reprimand but not a penalty. The subject surveyor signed the agreed order and the Committee presented it to the Board. Mr. Garcia moved to accept the order. The motion was seconded and approved. Mr. Cheatham and Mr. Merten abstained from voting. The subject surveyor was Gerald Carter, RPLS #1935.

viii. Complaint 14-23

Mr. Garcia and Ms. Chruszczak were on the ISC committee concerning this complaint. The complaint was brought because the surveyor did not find any deed work on the property and he used a partition map given to him by the owner. He had done his due diligence based on the information given to him by the property owner. After completing and signing the preliminary survey without recording information, the new property owner presented another existing map that no one knew about. The investigator noted that the surveyor had made a diligent effort to take care of the situation. The violations noted for this complaint are Rule 663.16(3)(b), related to Boundary Construction, and Rule 663.19(f), relating to Survey Drawing/Written/Description/Report. The recommendation is a reprimand and administrative penalty of $1,500 ($750 per violation). Mr. Kwan moved to approve the agreed order. The motion was seconded and approved. Mr. Garcia and Ms. Chruszczak abstained from voting. Mr. Estrada reported that the subject surveyor of the complaint was Ronald Brister, RPLS #5407.

ix. Complaint 12-17

Mr. Estrada informed the members that an informal settlement conference was held and this complaint was pending.

x. Complaint 13-40

Mr. Merten and Mr. Cheatham were on the ISC committee for this complaint. Mr. Merten reported to the Board that this complaint was filed because the subject surveyor had surveyed a

lot in a subdivision that had tracts within its boundary that were not part of the plat. The surveyor did not recognize these tracts as being adjoining tracts. These tracts were senior to the recordation of the plat so the subject surveyor failed to recognize this as junior/senior rights causing issues with the surveyor to the east of this tract. In the ISC, the subject surveyor recognized there was an issue and the he did not recognize the junior/senior rights. He was found to violate Rule 663.16(a), (b) and (d), relating to Boundary Construction, when he failed to rely upon the senior deed and honor the seniority of the adjoining deed when constructing the common line which resulted in constructing a senior line form monuments found in a junior subdivision and when he failed to hold the record monument called for in the senior deed, which he found at the roadway right of way line which is on the common line of the subject property and the adjoining property. The subject surveyor also violated Rule 663.19(7), relating to Plat/Description/Report, when he failed to show the correct recording information for the adjoining tract of the subject survey drawing. The information shown on the subject survey are numbers assigned by the appraisal district for taxing purposes, not for designation of recordation. The Committee is recommending a reprimand and an administrative penalty in the amount of $3,000. Mr. Edwards moved to approve the order. Mr. Garcia asked if the subject surveyor had not acknowledged the initial survey. Mr. Merten explained that the subdivision was laid out as lots and there were tracts that were not designated as lots and thus not part of the subdivision. Mr. Kwan asked if the area was urban or suburban and Mr. Merten replied that is was rural. There being no further discussion, a vote was taken and the order approved. Mr. Merten and Mr. Cheatham abstained from voting. Mr. Estrada stated that the subject surveyor was Rudolf Pata, RPLS #5388.

c. Request to be Found Frivolous

i. Complaint 15-03

ii. Complaint 15-09

iii. Complaint 14-17

The Chair informed the members that requests to find complaints 15-03, 15-09 and 14-17 frivolous had been received by the Board office. Mr. Garcia stated that he had read the requests found in the member's workbooks and felt that the other members had read the requests as well. He moved that the requests be approved. The motion was seconded and there being no discussion, a vote was taken. The requests were approved unanimously.

4. Committee Reports

a. Executive Committee

The Chair stated that the Executive Committee had not taken any action since the last meeting.

b. Rules Committee

i. Penalty Matrix Revisions.

Ms. Chruszczak said that the sanctions and penalty matrix had been brought to the Board for a final review. If there are no changes or comments, then the matrix could be approved for publication in the Register. Mr. Garcia moved to approve the matrix as presented. The motion was seconded and there being no discussion, the motion was approved unanimously. Mr. Estrada clarified that the rules would published as a proposed rule amendment and then later they would be adopted.

ii. Direct supervision

Ms. Chruszczak said that this was complimentary to what Mr. Estrada had presented to the Board from Alabama. The issue is having direct supervision and adding the wording to make certain the individual is onsite at the particular office where they are assigned. Ms. Chruszczak then read the proposed rule:

"Direct supervision—Being on site either in the Firm office or in the field in order ~~To be able~~ to recognize and respond to any problem that may arise; give instruction for the solution to a problem; give instructions for such research of adequate thoroughness to support the determination of the location of the boundaries of the land being surveyed; have knowledge and give instruction for ~~have knowledge of the research and the collection,~~ collection of relevant data; the placement of all monuments; the preparation and delivery of all Documents."

"661.55(g) At the time the firm receives a certificate of registration, before it can offer land surveying services, a responsible party on behalf of the firm shall sign the following and submit it to the Board:

I, _____, _____, (state position with Firm) on behalf of _____, Business Entity Certificate Number_____, hereby affirm that this Business Entity will always place the interest of the public above all others in our practice of Professional Land Surveying and this Business Entity will adhere to the Texas Professional Land Surveying Practices Act and General Rules of Procedures and Practices adopted by the Board."

"h) If the responsible party leaves the Firm, a new oath must be signed and submitted to the Board."

"661.57(2) A Firm shall designate a surveyor of record who is on site for the primary and for each branch office. The surveyor of record must be an active license holder who is employed full-time by the Firm and who is on site at the Firm's office, and shall perform or directly supervise all survey work and activities that require a license. The surveyor of record shall not be designated as the surveyor of record for more than one primary or branch office. "

"663.19(e) Boundary monuments found or placed by the land surveyor shall be described upon the survey drawing including how it is marked in a way that is traceable to the responsible registrant or associated employer. The land surveyor shall note upon the survey drawing, which monuments were found, which monuments were placed as a result of his/her survey, and other monuments of record dignity relied upon to establish the corners of the property surveyed."

Ms. Chruszczak moved to accept the comments as needed to be modified. The motion was seconded. Mr. Edwards asked if, regarding 663.19(e) asked if her proposal included the last sentence of the rule since she had not read it out loud. Ms. Chruszczak said that her proposed language would be in addition to the wording that was currently in the rule. Mr. Kwan asked what the purpose was of modifying the "direct supervision" verbiage. Ms. Chruszczak noted that this had been discussed at the last meeting Incidents were brought up where people listed as designated surveyor never came to the office, worked out of their house on a computer, using Skype. Mr. Kwan said the Board wants to make certain there is a real person at the office. Ms. Chruszczak said she does not want the Board to micromanage and does not know how the Board will monitor this issue unless a complaint is brought up. Mr. Garcia stated that he agrees with her comments but the relative issue is that everyone has to acknowledge that person is there....it is not the Board's responsibility, it is the survey company and you have to rely on the integrity of

the survey company. Ms. Chruszczak stated that everything being signed and sealed is the responsibility of that registrant. The Chair commented that if the registrant was being asked to oversee three firms, he knows how the rule is written and what it implies. Mr. Liller noted that most of these issues will come before the Board in form of a complaint. Hearing no further discussion, a vote was taken and the motion to publish the proposed rules passed unanimously.

iii. Firm's continuation of services under hardship

Ms. Chruszczak deferred to Mr. Estrada to discuss this topic. Mr. Estrada noted that prior to the major rule revision in August 2013, there was language in the rules pertaining to firms (Rule 661.55) that allowed a grace period for firms to operate under unusual circumstances such as the death of a surveyor. Members agreed that it was reasonable to have such language in the rules. The Chair said that Ms. Chruszczak would add the language back in and review it and then bring it to the Board at its next meeting. Ms. Chruszczak asked if, in the meantime, something happened, it would be handled on a case-by-case basis by the executive director. The Chair agreed. Mr. Edwards asked Mr. Estrada if something had come up recently that caused him to recognize this issue or was he just curious? Mr. Estrada explained that a couple of firms had contacted him, and given what they were dealing with he authorized them to continue operating for the interim. This concluded Ms. Chruszczak's report.

The Chair called for a 10-minute break at 10:14 a.m.

The meeting was reconvened at 10:32 a.m.

The Chair introduced new Board members Drew Paxton and Mark Neugebauer.

c. RPLS/SIT Examination Committee

i. October 2015 Examination Report

Mr. Hodde referred members to the report in their workbook. He noted that since the last meeting, 18 SIT applicants sat for the exam of which 5 passed. Sixteen applicants passed the RPLS exam. Mr. Estrada noted that 47 applicants had taken the exam.

ii. Conferment of Licensure

Mr. Hodde called for motion to certify the five SIT applicants. Mr. Garcia so moved. The motion was seconded and approved unanimously. Mr. Hodde then called for a motion to register the 16 individuals that passed the RPLS exam. The motion was offered, seconded and passed unanimously.

iii. Appointment of David Dossey and Bill O'Hara to Cut-off Score Committee

iv. Appointment of Ilona Rossato and Billy Wolfram to QAQC Committee

Mr. Hodde noted that these individuals were being appointed to the respective committees. This concluded Mr. Hodde's report.

d. LSLS Examination Committee

Mr. Merten reported that four applicants sat for the LSLS exam and, unfortunately, none passed. The LSLS Examination Committee will have a debriefing with the applicants in December. This concluded Mr. Merten's report.

e. Continuing Education Committee

Mr. Kwan recommended approval of the following courses:

- Manuel Carrizales
  - Texas History – How Surveying Shaped Texas
  - Professional Ethics
- RedVector.com LLC
  - Boundary Disputes Between Adjoining Land Owners
  - Best Practices for Creating Superior Land Description Plats
  - Developing an Employee Safety Training Program
  - Environmental Safety
  - Fixing a Boundary Line: Boundary Control & Legal Principles
  - Metes & Bound Surveys: An Essential review
  - Ethics for land Surveyors: Refraining from Conduct Detrimental to the Public
  - Ethics for Land Surveyors: Abiding by the Rules & Regulations for Surveying
  - Ethics for Land Surveyors: working outside your area of Engineering & Avoiding Conflicts of Interest
  - Ethics for Land Surveyors: Client Conflicts, Advertising & Professional Integrity
- Surveying and Mapping, LLC
  - PSMJ Financial Management Bootcamp (approved for 12 hours rather than the requested 14 hours)
- TSPS
  - Business metrics
- HalfMoon Education
  - Legal Issues in Texas Professional Land Surveying
- Individual Course Approval
  - David Scott Crain
    - OPUS Projects Manager Training

Mr. Kwan recommended denying approval for the following:

- RedVector.com LLC
  - Hazardous Waste: Treatment
  - Construction Project Delivery Systems
  - Principles of Design-Build
  - Green Design: Brownfield Redevelopment

Mr. Kwan also noted that the following courses were previously submitted and denied. He met with the applicants and recommends the following:

- Bury Inc
  - Situational Leadership ("Leadership" did not say much about the course but he reviewed the study materials with the applicant and agreed to approve the course.)
- Stephen Horvath, Edward Prince, and Robert M. Anguiano
  - TxDOT ROW Mapping Redline Checklist Class (approved for 4 hours rather than the requested 7 hours).

Mr. Garcia moved to approve Mr. Kwan's recommendations. The motion was seconded and carried unanimously.

5. Other Business

a. Recognition of Jim Childress, Board Member 2009-2015

Mr. Hodde read the following resolution:

Resolution Adopted by the

Texas Board of Professional Land Surveying

May 29, 2015

Honoring

James A. Childress

WHEREAS, *James A. Childress, after being admitted to the Texas State Bar in 1974, and admitted to practice before the United States Court of Appeals, Fifth Circuit and the United States District Court, Western District of Texas, began the practice of law in San Saba County, Texas; and*

WHEREAS, *James A, Childress, as appointed by the Governor Rick Perry to serve on the Texas Board of Professional Land Surveying in 2009, spent the subsequent six years providing support to the land surveying community of Texas through his extensive knowledge of Texas title law;*

THEREFORE BE IT RESOLVED *that the members and staff of the Texas Board of Professional Land Surveying express, on behalf of the citizens of the State of Texas, our gratitude to James A. Childress for his dedication to the community of land surveying, as well as the general public, and extend our most sincere congratulations upon his accomplishments; and include within its minutes a copy of this resolution, adopted this the 29th day of May in the year of our Lord two thousand fifteen, A.D.*

A plaque containing this resolution and a Texas flag flown over the Texas Capitol will be mailed to Mr. Childress.

b. RPLS Exam Format Change

Mr. Kwan explained that the Legal and Analytical exams are still being administered separately. The staff checks the examinees in for the Legal portion and then after everyone has completed the exam, the examinees are checked back into the room for the Analytical portion. The exam is still graded as one exam but the logistics would change so that there would be no break between the Legal and Analytical parts of the exam. These parts could be completed in four hours so the examinees would take the Legal and go on to the Analytical after completing the Legal part. Mr. Garcia moved to accept Mr. Kwan's proposal to remove the 30 minute break between the Legal and Analytical portions of the RPLS exam. The motion was seconded and carried unanimously.

c. Identification of monument cap on metes and bounds description and map

Mr. Kwan said that in light of the proposed rule discussed earlier in the meeting, he moved to table this topic.

d. NCEES PS exam

Mr. Kwan discussed moving towards the PS exam. He said there would be three exams: the SIT exam, the PS exam and then the state-specific exam. He felt that this additional exam would be an impediment to those wishing to become licensed. If the number of RPLS applicants is low now, the numbers could be even lower if we adopt the national exam. He believes that we need to protect Texas. If someone wants to be licensed in other states, that is there decision. Members should be considering this for the next meeting. Ms. Chruszczak offered that as of right now, concerning the national exam, others that have taken the exam, can come to Texas and take

the reciprocal exam. When it comes to our applicants, if they want to register in other states, they have the burden of taking the national exam. Applicants that take the national exam and get licensed in other states come to Texas and take an exam with fewer hours compared to the individuals that that are first licensed in Texas. The Chair commented that mobility was a concern and we would not want to restrict mobility. Ms. Chruszczak wondered if the pros and cons of moving to the PS exam would be written down to help members understand the issue and make a better decision. The Chair agreed, noted that Mr. Merten had previously reported on this issue to the Board. Mr. Garcia asked if the report could be reduced to writing, comparing costs and the impact on the Board staff, and present this to the members at the next meeting. Mr. Merten agreed and felt that the Board should also obtain input from registrants. Mr. Kwan noted that Mr. Gillis had offered the TSPS position at one Board meeting. Mr. Kwan also suggested that the exam committee chairs be involved and bring their recommendation to the Board. The Chair asked Mr. Merten to assist Ms. Chruszczak and Mr. Kwan with putting this report together.

e. University of Houston Bachelor of Science in Civil Engineering with minor in surveying engineering (geoscience)

Mr. Kwan reported that civil engineering department was seeing a drop in enrollment. Currently, civil engineering has 350 students, petroleum engineering has 1200 and mechanical engineering has 650-750. Civil engineering currently does not have a surveying program and they would like support to offer a minor in surveying. Mr. Kwan feels this would be a win-win situation because it could attract younger individuals to become licensed as surveyors. Mr. Kwan drafted the following proposed motion:

"Proposed motion by the Texas Board of Professional Land Surveying
University of Houston
Bachelor of Science Civil Engineering w/minor in Surveying
WHEREAS the University of Houston Civil engineering Department is proposing a four year curriculum which would include at least 32 semester hours of science, law, mathematics, and surveying, and;
WHEREAS the University has asked the Surveying, Engineering, and Real Estate communities if there is a need for such education in Houston, Texas, and;
WHEREAS the Professional Land Surveying Practices Act requires, at a minimum, that applicants have a four year degree including 32 semester hours of science, law, mathematics, and surveying prior to being admitted to sit for the licensure examination as a Registered Professional Land Surveyor, and ;
WHEREAS the Professional Land Surveying Practices Act provides special acknowledgement of a Bachelor of Science in Civil Engineering, as a specifically approved curriculum for being admitted to sit for the licensure examination as a Registered Professional land Surveyor, and ;
WHEREAS there is no other comprehensive Civil Engineering curriculum with 32 semester hours of study in science, law, mathematics and surveying being offered at any University in Texas;
THEREFORE BE IT RESOLVED that The Texas Board of Professional Land Surveying hereby declares that there is a public need for said curriculum, and;

THEREFORE BE IT FUTHER RESOLVED that The Texas Board of Professional Land Surveying hereby expresses its support and encouragement for the establishment of said proposed curriculum."

Mr. Merten moved to accept the resolution presented by Mr. Kwan. Ms. Chruszczak asked if this resolution would mean the individuals would not have to obtain the hours in responsible charge. Mr. Kwan said no, they would still have to meet the statutory requirement. The Chair noted that this was a resolution, not a rule or official action of the Board. Rather is it support for the University's proposed program. The motion was seconded and approved unanimously.

6. Future Agenda Items

Mr. Edwards asked that Rule 663.17(b) be placed on the agenda in order to start a dialogue amongst Board members.

The next meeting date was set for February 19, 2016 at 9:00 a.m.

7. Comments from the Public

Steven Wright spoke in support of Mr. Kwan's resolution in favor of the Houston curriculum. Dr. Nettleman (Texas A&M, Corpus Christi) had four items to discuss: 1) RPLS education waiver. The Texas engineering board waives the examination requirements for educators if they have graduated from an ABET accredited engineering program and if they teach at an ABET accredited engineering program. The educators at Texas A&M Corpus Christi ask that they be allowed to sit for the reciprocal exam if they both graduated from a surveying or related program and they currently teach at a surveying related program also. 2)Working with two-year programs to raise enrollment for land surveyors. Texas A&M is working with two year programs throughout Texas to allow them to automatically transfer in geomatics or surveying hours and continue on a seamless path to a four-year degree and RPLS licensure. 3) RPLS exam. Dr. Nettleman said they Board should consider the advantages for Texas surveyors by incorporating the NCEES PS exam as other states have done and not just focus on the exam watering down Texas requirements. 4) Continuing education courses. If courses are approved in other states, the course can be taught in Texas without additional Board review. The professors would like the same privilege, to have the courses certified by the professors for CLE credit and have them recognized by the TBPLS in the same manner to how other state boards can certify and Texas accepts. Paul Carey brought to the Board's attention a proposed Texas Railroad Commission rule regarding survey plats for well locations can be submitted by surveyors or professional engineers. Mr. Carey encouraged everyone to comment on the rule before the comment period closed. A registrant brought to the Board's attention the legal and title company propensity to refuse to convey property other than by the description it was originally conveyed. If conveyed by lot and block, and modern survey is done, they will not incorporate the current metes and bounds description because they believe that it creates a legal issue. Propagating the old description will prevent Texas from modernizing.

The meeting was adjourned at 11:26 a.m.

ATTEST: _____

Jon Hodde, Chair

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Marcelino A. Estrada, Executive Director