

<p>Meeting Date: October 27, 2016</p>	<p>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</p> <p>BOARD MEETING MINUTES</p>	<p>Page 1 of 12</p>
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Board Members Present

Jennifer Ferrera Schmid, President, Public Member
 Dave Connolly, Vice President, Public Member
 Captain Joe Long, Pilot Member
 Captain George Livingstone, Pilot Member
 Benjamin De Alba, Assistant Secretary for Rail and Ports, representing the Secretary of the California State Transportation Agency (CalSTA)

Board Members Absent

John Schneider, Wet Cargo Industry Member
 David Hoppes, Dry Cargo Industry Member
 Vacant, Public Member

Staff Present

Allen Garfinkle, Executive Director
 Roma Cristia-Plant, Assistant Director
 Dennis Eagan, Board Counsel
 Luis Cruz, Staff Services Analyst
 Sigrid Hjelle, Office Technician

Public Present

Knute Mike Miller, Past Board President, David McCloy, Acting Port Agent; Captain Sam D’Alosio, San Francisco Bar Pilot (SFBP); Captain Jeremy Lowe, Pilot Trainee; Rollie Caabay and Bernadette Silva, State Lands Commission; and Robert Neefe, United States Coast Guard

OPEN MEETING

1. Call to Order and Roll Call –President Schmid

President Schmid called the meeting to order at 9:30 a.m. Staff Services Analyst Cruz called the roll and confirmed a quorum.

2. Review and approval of Board meeting minutes –President Schmid

Board action to approve meeting minutes from the Board meeting held on September 22, 2016.

Board members were presented with the minutes of the meeting held on September 22, 2016. Assistant Director Cristia-Plant confirmed that technical edits were made to agenda item 20 by Mr. Paetzold, and those edits have been provided to the Board and public. There was no further discussion of the minutes and no public comments.

MOTION: Vice President Connolly moved to approve the minutes of the meeting held on September 22, 2016, as amended. President Schmid seconded the motion.
 VOTE: YES: Schmid, Connolly, Livingstone and Long.

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NO: None
 ABSTAIN: None
 ACTION: The motion was approved.

**3. Announcements – President Schmid
 Announcement of events affecting Board business since the last Board meeting.**

President Schmid announced that she had an informal lunch with Mr. Jacob on October 19, 2016, and discussed various Board business issues.

**4. Board Member Activities – Board Members
 Reports by Board Members having Board business-related activities since the last monthly Board meeting or planned prospectively.**

Commissioner Long announced that since the last Board meeting three researchers from the San Jose State University Research Foundation, who are working on the pilot fatigue study, participated in ship ride-alongs with him, and that he discussed with the researchers various piloting duties and procedures. He stated the primary researcher, Dr. Hobbs, indicated to him the vessel trips and discussion were very informative.

5. Directors’ Report – Executive Director Garfinkle/Assistant Director Cristia-Plant

A) Correspondence and activities since the Board meeting held on September 22, 2016.

Executive Director Garfinkle reported on correspondence received by the Board since the Board’s September meeting as follows:

- On October 5, 2016, Board staff received a copy and article from the *Southeast Texas Record* that detailed the circumstances of a lawsuit against the Board of Pilot Commissioners for the Galveston County Ports filed by three attorneys on behalf of several plaintiffs in an effort to have an order for new pilotage rates overturned. He stated the article indicated the plaintiffs accused the board of actions that were arbitrary, capricious, and constituted an abuse of discretion.
- On October 5, 2016, Board staff received condition and valuation surveys for the pilot vessels PITTSBURG and SAN FRANCISCO. Board acceptance of these surveys is on the agenda under item 13.
- On October 12, 2016, he attended a Director’s meeting with Secretary Kelly at CalSTA.
- On October 13, 2016, he attended a Harbor Safety Committee meeting at the California Maritime Academy Safety and Security Center in Richmond, CA.
- On October 13, 2016, Board staff received a letter announcing that an electronic filing system for the Form 700 was now ready for use.
- On October 18, 2016, as part of Dennis Bryant’s daily news feed, Board staff was made aware of an incident in Australia where a containership grounded and poor bridge resource management was found to be a factor. A copy of the Australian

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- Transportation Safety Bureau’s report on the Grounding of the *Maersk Garonne* was provided to the Board.
- On October 20, 2016, Board staff received a copy of a rough draft of an article destined to be published in *GCaptain* and authored by Commissioner Livingstone. He stated that Commissioner Livingstone noted in his cover email to Board staff that all of his work is vetted by the leadership in their national piloting organization.
 - On October 21, 2016, Board staff received a copy of a letter from Senate Rules Committee Appointments Director Annette Porini, congratulating David Hoppes on his appointment to the Board, and requesting certain documents in order to begin the confirmation process.
 - On October 26, 2016, Board staff received an invitation to the 2017 California Maritime Leadership Symposium scheduled for February 15-16, 2017, in Sacramento, CA.
 - He has received a written retirement notifications from Captains Roberts and Fuller, and that both pilots have selected a January 1, 2017, retirement date.

B) Report on pilot licensing matters in the past month and current month.

Executive Director Garfinkle reported on the following pilot licensing matters:

- Between the August and September Board meetings, Board staff renewed the licenses of Captains Le Sieur and Boriolo.
- Since the September Board meeting, Board staff renewed the licenses of Captains Kleess and Dowdle.

C) Report on Board surcharges.

Executive Director Garfinkle reported the Board received a check from the SFBP for \$155,834.16 for the September 2016 surcharge revenues as follows:

- Board Operations Surcharge \$ 102,860.16
- Pilot Continuing Education \$ 3,440.00
- Trainee Training Surcharge \$ 49,534.00

D) Report on legislative activities and contractual matters.

Assistant Director Cristia-Plant reported the following legislative activities and contractual matters that occurred since the last Board meeting:

- There is no legislation to report on for a while, and a new two-year legislative session will begin next February.
- As discussed before, the current contract with the SFBP expired on June 30, 2016. The Board and the SFBP have executed an emergency contract covering the period of 7/1/16 through 12/31/16. Board staff are working with the California Highway Patrol (CHP) contract analyst to obtain all final contract approvals.

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- Board staff have drafted a non-competitive procurement justification and new 5-year contract with the SFBP, and will meet with SFBP's General Counsel and contracts staff next week to finalize the draft contract.
- Board staff and staff from the California Department of Transportation (Caltrans) have also executed a new \$46,000 three year agreement for desktop information technology and information security support services. CHP contract staff are working on final obtaining final contract approvals.
- Board staff are still awaiting a determination from the California Department of Human Resources (CalHR) if the two entities can enter into an interagency agreement for trainee drug testing. As discussed before, CalHR has a master agreement with a private firm to provide drug testing services to state employees, and enters into interagency agreements with various state departments to utilize the services under its master agreement. CalHR recently notified Board staff that a memo has been sent to the Director of CalHR seeking permission to provide services to the Board and the Department of Parks and Recreation under its master drug testing contract to non-state employees. CalHR expects to have an answer soon from its Director.
- Our CHP contract analyst is moving forward on contract procurement documents to retain CPA services for the Pilot Pension Plan. In the interim, Board staff will continue to prepare the monthly pension plan reports, and the quarterly surcharge calculations.
- As stated at prior meetings, CalPERS has confirmed that the Board can utilize one of the firms their pre-approved pool of actuaries. Staff is ready to work with CalPERS upon direction from the Board to contract with an actuary.

6. Port Agent's Report – San Francisco Bar Pilot (SFBP) Port Agent Capt. Peter McIsaac

A) Monthly report on pilot availability and absences.

Acting Port Agent McCloy reported that Captain Kelso has been absent for medical reasons since June 19, 2016, and that he was placed on medical disability status effective July 20, 2016. He also reported that Captain Kenyon has been absent for medical reasons since July 2, 2016, and that he was placed on medical disability status effective July 25, 2016.

Acting Port Agent McCloy reported the SFBP continually monitors the dispatch list for possible minimum rest period (MRP) exceptions, and if the potential exception is likely to result in a rest period of less than ten hours, mitigating measures are employed by the SFBP. He reported that these measures include, but are not limited to, suspending continuing professional development protocols, cancelling scheduled meetings, cancelling previously granted compensating time off requests, suspending SFBP internal working rules, or calling in off-watch pilots.

He reported the SFBP currently has 57 licensed pilots. There were 13 MRP exceptions in September, and the shortest rest period was 9.7 hours.

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B) Monthly report on SFBP ship piloting business activity.

Acting Port Agent McCloy reported that the P/V SAN FRANCISCO was in the shipyard for three days for minor deck coating repairs. He also reported the P/V SAN FRANCISCO had a major modification the past summer to the main deck pilot landing area where pilots jump from ship to boat, which included heavy duty, shock absorbing rubber mat with improved footing grip fixed to the deck with steel transition areas and bracketing. He stated that is has shown to be a very good upgrade with regard to safety, and may also improve long-term pilot health by reducing repetitive impact when disembarking ships. He further reported that the P/V CALIFORNIA and the P/V DRAKE are projected to be similarly modified as well.

Acting Port Agent McCloy reported billed vessel moves in September 2016:

- Bar Crossings: 541 moves
- Bay Moves: 101 moves
- River Moves: 30 moves
- Total Moves: 672 Moves
- Gross Registered Tons (GRT): 31.5 Million

Lastly, he reported when comparing 2016 year-to-date vessel move data with the same 9-month period in 2015, total moves were up 4.4%, and GRTs were up 18.8%.

Acting Port Agent McCloy presented findings from the SFBP Outreach report. He reported that SFBP has maintained contact with California Maritime Academy (CMA) and Vallejo Unified School District regarding development of maritime based curriculum within one of the Vallejo high schools and that SFBP has also agreed to provide up to \$5,000 in funding and presentation in piloting careers for the Summer Academic Enrichment Program (SAEP) at CMA for 2017.

Acting Port Agent McCloy presented a quarterly report on the SFBP's diversity outreach efforts, and stated the efforts are centered in three main areas: getting high school graduates interested in maritime and piloting careers, mentoring recent graduates from maritime academies who are working in maritime positions, and encouraging qualified mariners to take the Board's Pilot Trainee Training Program selection examination to become a state licensed pilot. Acting Port Agent McCloy discussed the following quarterly activities of the SFBP's Diversity Outreach Committee:

1. Maintained contact with the California State University Maritime Academy (CMA) and the Vallejo Unified School District staff regarding development of a maritime-based curriculum in one of the Vallejo district's high schools.
2. Followed up with staff from the Jesse Bethel High School, Vallejo Unified School District Academy of International Finance, with the goal of developing a maritime curriculum.
3. Agreed to provide up to \$5,000 in funding to CMA for its 2017 Summer Academic Enrichment Program, and to make a presentation on piloting to program attendees.

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Other program supporters include the Ports of San Francisco and Oakland, and Chevron.

4. Made contact with and the SFBP is now actively mentoring an African American 2016 graduate of Texas A&M Maritime Academy, focusing the graduate on a career path to become a member of the SFBP.
5. Continued outreach and mentoring of women and minorities currently serving in command positions who intend to take the Board's June 2017 Pilot Trainee Training Program selection examination. The SFBP invited a qualified female tug captain who intends to take the next examination to visit the SFBP's office this past April and October to learn more about the SFBP's operations.
6. Continued development of an SFBP internship program. Elizabeth O'Brien, a CMA Cadet, is scheduled to intern the winter of 2016-17, and several other candidates have been interviewed for future internships.
7. Several pilots have provided familiarization talks on the Port of Oakland's harbor tours. The tours are free to the public through October.
8. Conducted quarterly meetings with the San Francisco Port Commission President W. Adams to discuss various outreach and mentoring efforts and opportunities.
9. Conducted follow up efforts to explore effective outreach ideas with the Organization of Black Maritime Graduates (through President Adams and through the International Organization of Masters, Mates & Pilots Union), Captain Robert Cook, and the Pilots' Association for the Bay and River Delaware.

Commissioner Livingstone stated that the SFBP Diversity Committee has been very active for the past year. He confirmed for Commissioner Schneider that he and a couple other pilots are actively mentoring mariners. Acting Port Agent McCloy stated that mentored mariners are likely to become a Board-licensed pilot much more quickly than a non-mentored mariner. Commissioner Schneider and Vice President Connolly thanked the SFBP for their outreach efforts.

Acting Port Agent McCloy confirmed for Vice President Connolly that the SFBP paid for the deck modifications on the P/V SAN FRANCISCO as a maintenance expense since these upgrades are not life extending capital improvements that otherwise could have been financed with Pilot Boat Surcharge funds.

C) Monthly confidential written report of pilots who have been absent for medical reasons (AFMR) presented to Board. The Board may go into closed session to discuss contents of the Port Agent's confidential report as authorized by Harbors and Navigation Code § 1157.1.

There was no discussion of the confidential written report of pilots who have been absent for medical reasons. There was no closed session discussion of this item.

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7. Pilot Evaluation Committee – Captain George Dowdle

A) Report on the Pilot Evaluation Committee (PEC) meeting held on October 12, 2016.

PEC Chairman Dowdle was not in attendance. Acting Port Agent McCloy read Chairman Dowdle’s written report and stated the following:

- The PEC met on October 12, 2016.
- All trainees were interviewed individually in closed session.
- The six current trainees include: Captains Lowe, Rubino, Cvitanovic, Epperson, Alfes and Vogel. Their time in the program ranges from 7 to 23 months.
- We presently have two trainees in Evaluation Status.
- All trainees are continuing to progress and meet the required benchmarks.
- Two new trainees are scheduled to start the training program in January 2017.
- The PEC will meet next November 9, 2016 at 0730.

Executive Director Garfinkle confirmed for the Board that the two new trainees have been offered positions in the Pilot Trainee Training Program, and both have accepted. He stated both new recruits have started the process to document their sea time and the process to obtain a fitness determination from the Board-approved physicians at the University of California at San Francisco.

B) Possible PEC recommendation to place one or more Pilot Trainee Training Program trainees on probation, or dismiss one or more trainees from the program. Possible Board action to place one or more Pilot Trainee Training Program trainees on probation, or dismiss one or more trainees from the program.

There were no recommendations.

C) Possible PEC recommendation for a determination that a trainee has or trainees have completed the Pilot Trainee Training Program. Possible Board action to award a Certificate of Completion to a trainee who has completed the Pilot Trainee Training Program.

There were no recommendations.

D) Possible recommendation from the Executive Director for the appointment of a new pilot or pilots. Possible Board action to accept a recommendation from the Executive Director that a trainee holding a Certificate of Completion from the Pilot Trainee Training Program be licensed as a state-licensed pilot.

There were no recommendations.

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8. Reported safety standard violations – Executive Director Garfinkle (Reports received between the issuance of this notice and the meeting will also be reported on.)

Executive Director Garfinkle stated there were no safety standard violations to report.

9. Reportable Piloting Events – Executive Director Garfinkle (Reports received between the issuance of this notice and the meeting will also be reported on.)

A) Status report on the September 3, 2016, wake damage at the RiverPoint Landing Marina Resort near Stockton, California, alleged to be caused by the T.V. LUIGI LAGRANGE.

Executive Director Garfinkle reported that the piloting event involving the T.V. LUIGI LAGRANGE occurred on September 3, 2016, and the 90-day date for the Incident Review Committee (IRC) report is December 2, 2016. He stated he is targeting the November Board meeting to present the IRC report.

B) Status report on the September 7, 2016, grounding of the S.S. PETERSBURG in Suisun Bay, while being flat towed to the Suisun Bay Reserve Fleet.

Executive Director Garfinkle reported that the piloting event involving the S.S. PETERSBURG occurred on September 7, 2016, and the 90-day date for the IRC report is December 6, 2016. He stated he has received the pilot's statement, and is also targeting the November Board meeting to present the IRC report.

**10. Loss of propulsion/low sulfur fuel report – Executive Director Garfinkle
Report on loss of propulsion events arising in September 2016, including those events suspected to be due to low sulfur fuel issues.**

Executive Director Garfinkle reported that there were two loss of propulsion/power incidents reported on the September's U.S. Coast Guard's San Francisco Harbor Safety Statistics report, and neither was attributable to fuel switching.

11. Rules and Regulations Committee – Commissioner Long

A) Report on the status and progress of various Board rulemaking efforts, including the following sections in Title 7, California Code of Regulations:

a. Section 211.5 – Commission Investigator Minimum Standards (amend minimum qualifications standards).

b. Section 213 – Pilot Trainees (add exam fee and clean-up of regulations).

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- c. **Section 215 – Pilot and Inland Pilot Training (add fatigue management and radar navigation in low/restricted visibility training and clean-up).**
- d. **Section 218 – Duties of Port Agent (amend requirement for assignments of pilots with under 12 and 18 months experience).**
- e. **Section 222 – Conflicts of Interest (add Port Agent Conflict of Interest regulation).**

Rules and Regulation Committee Chairman Long reported that the rulemaking package covering California Code of Regulations (CCR) sections 211.5, 213, 215 and 218 were approved by the Office of Administrative Law, and will be effective January 1, 2017. Chairman Long did not provide a report on CCR section 222.

12. Navigation Technology Committee – Committee Chairman Livingstone

A) Report on the Navigation Technology Committee meeting held on October 12, 2016.

Navigation Technology Committee Chairman Livingstone reported that the Committee met on October 12, 2016, discussed and postponed updating a Committee mission statement, and discussed progress the SFBP’s Navigation Technology Committee is making on researching portable piloting units and precision docking equipment, primarily utilized with ultra large container vessel (ULCV) maneuvers. He also reported the Committee conducted a detailed discussion of whether or not to proceed with emergency navigation technology rulemaking, and noted that Mr. Jacob of the Pacific Merchant Shipping Association discussed his position in support of emergency rulemaking along the lines of the draft regulations staff crafted after the September Finance Committee meeting in order to establish a transparent and public process for the Board’s approval of navigational technology purchases and surcharge rate setting. Chairman Livingstone further reported that Board Counsel Eagan opined for the Committee that rulemaking was not required for ad hoc decisions, but that the Board could elect to proceed with emergency rulemaking although he expressed a concern about the length of time it would take to get emergency regulations in place given the apparent need for pilots to acquire new technology in the very near future. Chairman Livingstone lastly reported to the Board that the Committee considered and voted on a motion to recommend to the Board to instruct staff to commence emergency navigation technology rulemaking, and noted the motion was unanimously voted down.

Board Counsel Eagan stated he provided Executive Director Garfinkle a memo dated October 10, 2016, in which he outlined whether regulations are required for implementation of Assembly Bill (AB) 1432. He stated that regulations are required for actions that are of general application, and that the Office of Administrative Law is clear that a case-by-case determination does not violate the Administrative Procedures Act so long as the Board is not implementing a rule or standard of general application.

Board Counsel Eagan referenced Mr. Jacob’s letter dated October 24, 2016, sent to President Schmid, supporting the promulgation of emergency regulations to implement Harbors and

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Navigation Code (HNC) §1190.4, and stated that the letter appears to focus on a public process and procedure, and that the new legislation does not include any specific provisions about the Board’s approval process. He also reaffirmed for the Board that the Bagley-Keene Act requires the Board to conduct public proceedings.

Board Counsel Eagan read a portion of the Assembly Committee analysis for AB 1432 that stated there should be a public process, and confirmed for Commissioner Long that the Committee bill analysis is consistent with open meeting laws. He also confirmed for President Schmid and Commissioner Long that regulations might eventually be required if there were multiple equipment and/or software purchases, but that it was his understanding that the pilots desire to make a one-time application for the technology purchase, and that staff might have difficulty crafting a regulation to define “reasonable and necessary” and related procedures without having the benefit of the knowledge of going through the process one or more times. He indicated that there may be room for regulations to promulgate a process of “how” the Board determines “reasonable and necessary” regarding navigation technology acquisitions once the Board has a better idea of the process, having worked through it on an ad hoc basis.

Board Counsel Eagan also discussed timing issues arising out of and need for the technology purchases by the pilots given the January 1, 2017, effective date of the legislation. He stated that there is strong practical argument that the Board could approve technology purchases that occurred between the Governor’s approval of the legislation and January 2, 2017, given a one-time decision and the urgent need for the technology.

Vice President Connolly and Commissioner Long both voiced opinions that it is important to obtain the new technology as quickly as possible for safety reasons, and that they would be approving of the least restrictive process to the pilots acquiring the new technology.

Captain McCloy confirmed for Executive Director Garfinkle that Booz Allen Hamilton is now representing that the company can provide technical support to the PilotMate equipment, which the pilots use for ULCV work, past the end of 2016, as opposed to earlier assertions that such support would cease at the end of the calendar year. Executive Director Garfinkle then posited a concern about this development removing the justification for requesting emergency regulations.

B) Possible recommendation from the Navigation Technology Committee to Board to direct Board staff to commence emergency rulemaking to implement HNC §1190.4. Possible Board action to direct staff to commence emergency rulemaking to implement HNC §1190.4.

President Schmid requested a motion to direct staff to commence emergency regulations to implement HNC 1190.4. Hearing none, she concluded the discussion on this item with no Board action.

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13. Review and acceptance of Condition and Valuation Surveys for the Pilot Vessel PITTSBURG and the Pilot Vessel SAN FRANCISCO. Possible Board action to accept Condition and Valuation Surveys for the Pilot Vessels PITTSBURG and SAN FRANCISCO.

Executive Director Garfinkle presented pilot vessel surveys for the P/V PITTSBURG and the P/V SAN FRANCISCO to the Board, and stated that regulations call for a pilot vessel survey every two years to determine if the vessel safe and suitable for its intended use, and that the Board only needs to accept the report. Vice President Connolly inquired about an outstanding finding in the survey and Executive Director Garfinkle referred him to an email from the Marine Superintendent that followed up on outstanding issues.

- MOTION:** Vice President Connolly moved to accept the Condition and Valuation Surveys for the Pilot Vessels PITTSBURG and SAN FRANCISCO.
Commissioner Livingstone seconded the motion.
- VOTE:** YES: Schmid, Connolly, Livingstone and Long.
NO: None
ABSTAIN: None
- ACTION:** The motion was approved.

14. Report on the status of San Francisco Bar Pilot Pension Plan litigation – Board Counsel Eagan
Status report on Craig E. Reeder vs. State Board of Pilot Commissioners litigation. The Board may go into closed session to discuss with Board Counsel any matters subject to attorney-client privilege as per Government Code §11126(e) of the Bagley-Keene Open Meeting Act.

Board Counsel Eagan stated that there was nothing new to report, and that the case is still pending in the appellate court.

15. Board discussion of best practices in maritime safety – Vice President Connolly

A Board discussion of best practices in maritime safety and/or lessons learned from Incident Review Committee incident reports or other sources, and possible directions to staff to develop safety policies and procedures. Possible Board action to direct staff to develop safety policies and procedures.

Vice President Connolly referred back to the Australian Transport Safety Bureau’s report on the Grounding of Maersk Garonne included as part of Executive Director Garfinkle’s report, and noted the lack of effective bridge resource management was a contributing factor in the incident. He stated that it is key to public safety to ensure effective bridge resource management that encompasses the human element and the shared mental model. Commissioner Livingstone stated that “challenge and response” is the real issue, and that challenge is adversarial and that in his opinion, it is not acceptable to challenge the pilot. He stated that upcoming bridge resource management training will include “out of the box” thinking and the concept of human element.

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He also stated no training will be able to eliminate single person error, and that a single person error does not necessarily mean systemic failure.

Commissioner Long stated that he had a different focus after reading the report, and determined that there was a failure of the pilot and the pilot organization. Vice President Connolly stated that he would like to avoid systems and procedures that create an opportunity for a one-person silo effect errors.

President Schmid called for a short recess and then a closed session after recess to discuss agenda item 16.

BEGIN RECESS: 11:24 A.M.
END RECESS/BEGIN CLOSED SESSION: 11:30 A.M.

16. Performance Evaluation of the Executive Director follow-up – President Schmid

Follow-up to the Annual Performance Evaluation of Executive Director. The Board may go into closed session pursuant to 11126(a)(1) of the Bagley-Keene Open Meeting Act to discuss the evaluation follow-up.

END CLOSED SESSION: 11:52 A.M.

Board Counsel Eagan reported that agenda item 16 was discussed in closed session.

17. Public comment on matters not on the agenda.

There was no public comment on matters not on the agenda.

18. Proposals for additions to next Board meeting agenda.

There were no proposals for additions to the next Board meeting agenda.

19. Adjournment.

President Schmid called for a motion to adjourn.

MOTION: Commissioner Long moved to adjourn the meeting. Vice President Connolly seconded the motion.

VOTE: YES: Schmid, Connolly, Livingstone and Long.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved. The meeting was adjourned at 11:53 a.m.

Submitted by:



Allen Garfinkle, Executive Director