

<p>Meeting Date: March 26, 2020</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 14</p>
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Board Members Present

Dave Connolly, President, Public Member
 Joanne Hayes-White, Vice President, Public Member (via telephone)
 Captain Robert Carr, Pilot Member (via telephone)
 David Hoppes, Dry Cargo Industry Member (via telephone)
 Captain Einar Nyborg, Pilot Member (via telephone)
 Captain Oscar Prada, Tanker Company Industry Member (via telephone)
 Stephanie Dougherty, Designee of the Secretary of the California State Transportation Agency
 (CalSTA) (via telephone)

Board Members Absent

Vacant, Public Member

Board Staff Present

Allen Garfinkle, Executive Director
 Roma Cristia-Plant, Assistant Director
 Dennis Eagan, Board Counsel (via telephone)
 Alethea Wong, Administrative Assistant II

Public Present (in person)

Captain John Carlier, Acting Port Agent; Captain Anne McIntyre, San Francisco Bar Pilots (SFBP)
 Business Director; Captain Steven Teague, SFBP; and Captain Christopher Pyne Mercier, BOPC
 Pilot Trainee.

Public Present (via telephone)

Ray Paetzold, SFBP General Counsel; Captain Christopher Pyne Mercier's family; and Kevin
 Baldwin, Bullivant, Houser & Baily PC.

OPEN MEETING

1. Call to Order and Roll Call (President Connolly)

President Connolly called the meeting to order at 9:30 a.m. Administrative Assistant II
 Wong called the roll and confirmed a quorum.

2. Review and approval of Board meeting minutes (President Connolly)

**Board action to approve the minutes from the Board meeting held on February 27,
 2020.**

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Board members were presented with the draft minutes from the meeting held on February 27, 2020. Commissioners Nyborg and Prada requested minor edits to the minutes. There was no further discussion.

MOTION: Commissioner Prada moved to approve the draft minutes of the meeting held on February 27, 2020, as amended. Commissioner Hoppes seconded the motion.

VOTE: YES: Connolly, Carr, Hayes-White, Hoppes, Nyborg, and Prada.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

3. Public comment on matters on the agenda or not on the agenda.

There were no public comments.

4. President Announcements and Activities (President Connolly)

President Connolly thanked Board staff for their efforts to keep the Board's essential business moving forward during the shelter-in-place. He also thanked BOPC-licensees for their continued service to the public.

5. Board Member Announcements and Activities (Board Members)

There were no announcements.

6. Directors' Report (Executive Director Garfinkle/Assistant Director Cristia-Plant)

Executive Director Garfinkle thanked Board staff and Board-licensees for continuing to work during the state and local emergency orders.

A) Correspondence and activities since the Board meeting held on February 27, 2020.

Executive Director Garfinkle reported on the following:

- On March 3, 2020, he sent Board staff a letter that described COVID-19 health and safety protocols.
- On March 16, 2020, Board staff received Marine Safety Information Bulletin (MSIB) 06-20 issued by the United States Coast Guard (USCG) titled, *Vessel Reporting Requirements for Illness or Death*.
- On March 17, 2020, the Governor issued Executive Order N-29-20 in which the Governor noted that he declared a State of Emergency on March 4, 2020, due to the

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- threat of COVID-19, and among other things, updated Executive Order N-25-20 regarding waivers of certain requirements of the Bagley-Keene Act for public meetings.
- On March 18, 2020, he sent a letter to Board staff summarizing workplace and community health and safety steps to slow the spread of COVID-19 while continuing to work.
 - Also on March 18, 2020, he issued a letter to all BOPC trainees summarizing health and safety steps they can take to reduce person-to-person transmission of COVID-19 as they continue training.
 - Also on March 18, 2020, Board staff received MSIB 02-20 (Change 3) titled, *Novel Coronavirus-Update (Change 3)*.
 - On March 19, 2020, the Governor issued Executive Order N-33-20, which ordered, among other things, all Californians to shelter in place unless working in critical infrastructure sectors.
 - On March 20, 2020, he sent a memo to the CalSTA Secretary requesting the Governor waive the statutory and regulatory requirements for pilots and trainees to obtain a medical assessment for a license renewal and annual medical assessments, respectively, and noted that the request was later amended to include a similar waiver for pilot continuing education requirements since it is unclear if the pilot continuing education training will be available in the near term.
 - Also on March 20, 2020, he provided SFBP Business Director Anne McIntyre with a letter to distribute to pilots that confirmed that BOPC-licensees are essential service workers.
 - On March 23, 2020, Board staff received the Pacific Merchant Shipping Association *West Coast Trade Report* for March 2020.
 - On March 23, 2020, Board staff received guidance from the Department of General Services on required notification to the state in the event of a confirmed COVID-19 case in a state building or leased facility.
 - On March 25, 2020, he received a letter from Captain Joe Long, SFBP President and Port Agent, outlining the current and potential vulnerabilities to pilots of COVID-19.
 - Also on March 25, 2020, Board staff received a Department of Homeland Security, Cybersecurity & Infrastructure Security Agency memorandum titled, *Identification of Essential Critical Infrastructure Workers During COVID-19 Response*, which listed maritime transportation workers and credentialing/licensing operations as essential to continued critical infrastructure viability.
 - On March 25, 2020, he consulted with the Pilot Evaluation Committee Chair Captain Teague regarding multiple trainees on vessels, and Captain Teague subsequently issued a letter to trainees limiting one trainee per vessel, with the most senior trainee receiving vessel preference.
 - He has participated daily for the past several weeks in conference calls with all CalSTA directors and Secretary David Kim, and noted the conference calls are to keep the CalSTA executive leadership abreast of the state's response to COVID-19.

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- Executive Director Garfinkle responded to a concern of Commissioner Nyborg related to pilot annual medical assessments, and stated that the Board President and Board staff are working with CalSTA staff to request the Governor to issue an Executive Order to delay the medical assessment requirement for a period of time for pilots needing to renew BOPC licenses and trainees requiring annual medical assessments, and to waive statutory and regulatory requirements for pilots to obtain periodic training to renew a license. Commissioner Carr noted the federal government had deferred its mariner medical assessment requirement due to the pandemic. President Connolly stated that the USCG has also closed its exam centers.

B) Report on pilot licensing matters since the Board meeting held on February 27, 2020.

Executive Director Garfinkle reported that since the February Board meeting, the Board renewed the licenses of Captains Aune, Bridgman, Coppo, Martin, Pate, Kasper, and Rubino.

C) Report on Board surcharges.

Executive Director Garfinkle reported that the Board received a check from the SFBP for surcharges collected in February 2020 in the amount of \$142,085.37, itemized as follows:

- Board Operations Surcharge: \$76,995.37
- Trainee Surcharge: \$19,810.00
- Continuing Education Surcharge: \$45,280.00

D) Report on legislative activities and contractual matters.

Executive Director Garfinkle stated there were no legislative activities or contractual matters to report this month.

7. Port Agent's Report (Port Agent Long)

A) Monthly report on San Francisco Bar Pilots (SFBP) pilot availability and absences.

Acting Port Agent Carlier reported that following pilots have been absent for medical reasons (AFMR) and their initial absence date:

- Captain Carlier – September 11, 2019
- Captain Kirk – November 27, 2020
- Captain Boriolo – January 6, 2020
- Captain Slack – March 18, 2020

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- Captain Kleess – March 19, 2020
- Captain Greger – March 7, 2020

He reported that the SFBP continually monitors the dispatch list for possible 12-hour minimum rest period (MRP) exceptions, and if the potential exception is likely to result in a rest period less than 10 hours, mitigating measures are employed by the SFBP. He reported that mitigating measures include, but are not limited to, suspending continuing professional development protocols, canceling schedule meetings, canceling previously granted compensated time off requests, suspending SFBP internal working rules, and calling in off-watch pilots.

He reported that there are currently 55 licensed pilots, there were no MRPs last month, and that Captain Slack has been working from home as the acting Operations Pilot.

Commissioner Nyborg reported that Captain Coppo also worked as the Operations Pilot while he was out for medical reasons.

B) Monthly report for February 2020 on SFBP ship piloting business activity.

Acting Port Agent Carlier reported that all pilot vessels are in operational status.

He reported that the billed vessel moves for February 2020 were as follows:

- Bar Crossings: 457 moves
- Bay Moves: 131 moves
- River Moves: 41 moves
- Total Moves: 629 moves
- Gross Registered Tons (GRT): 26.4 million

He also reported that when comparing 2020 year-to-date vessel move data with the same period in 2019, total moves were down 10% and GRT was down 11.3%.

C) Monthly confidential written report of SFBP pilots who have been absent for medical reasons (AFMR). 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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8. Pilot Evaluation Committee (Captain Teague)

A) Report on the Pilot Evaluation Committee (PEC) meeting held on March 18, 2020.

PEC Chair Captain Teague reported the following:

- The PEC met on March 18, 2020, and in attendance were Committee members Captains Carlier, Haggerty, Robinson, and Teague.
- The PEC provided Executive Director Garfinkle a report of trainee activity for February 2020.
- All trainees were interviewed and counseled individually in closed session by the PEC members on their progress in the Pilot Trainee Training Program.
- The eight current trainees include Captains Adams, Benedict, Burchard, Deisher, Nelson, Pyne Mercier, Rogers, and Stevens. The range of time in the program for these trainees is 6 months to 32 months.
- Captains Burchard, Nelson, Pyne Mercier, and Stevens have their full unlimited federal pilotage endorsement with the USCG. Captain Pyne Mercier is in the evaluation stage of the Pilot Trainee Training Program. These four trainees are handling vessels as much as possible, with an occasional observation trip to watch a licensed pilot perform their duties.
- The remaining four trainees—Captains Adams, Benedict, Deisher, and Rogers—are acquiring route trips, are testing with the USCG for their pilotage endorsements, and are handling vessels in areas where they have their endorsements.
- All trainees are presently meeting the recommended benchmarks in the program and are progressing at their own rate.
- The next PEC meeting is scheduled for April 15, 2020, at 7:30 a.m. at the Board office.

He thanked Executive Director Garfinkle for maintaining daily open communications regarding protocols for the trainees during the pandemic.

B) Possible PEC Committee recommendation to the Board to reappoint PEC Committee member Captain Eric Robinson to a second four-year term. Possible Board action to reappoint PEC Committee member Captain Eric Robinson to a second four-year term.

PEC Chair Captain Teague reported that PEC member Captain Robinson's Committee term expired in February, and he recommended the Board ratify the President's action taken at the February Board meeting to reappoint Captain Robinson to a second term on the PEC.

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MOTION: Commissioner Nyborg moved ratify the President’s action at the February Board meeting to reappoint Pilot Evaluation Committee member Captain Eric Robinson to a second four-year term. Vice President Hayes-White seconded the motion.

VOTE: YES: Connolly, Carr, Hayes-White, Hoppes, Nyborg, and Prada.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

C) 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 was no recommendation.

D) 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.

PEC Chair Captain Teague reported that the PEC concluded its training of trainee Captain Christopher Pyne Mercier at its meeting on March 18, 2020, and determined that Captain Pyne Mercier successfully completed all elements of Section 214(c) and (h) of the Pilot Trainee Training Program requirements listed in the Board’s Regulations. Captain Teague provided the following data:

- Captain Pyne Mercier entered the Pilot Trainee Training Program on January 18, 2018.
- Since that time, Captain Pyne Mercier completed a total of 829 training jobs with the San Francisco Bar Pilots, of which 203 were as an observer and 626 were jobs which Captain Pyne Mercier handled or partially-handled the vessel and directed the navigation and control of the vessel.
- Captain Pyne Mercier completed 204 training jobs with PEC members, 18 of which were in the previous 90 days.
- As required by regulation, Captain Pyne Mercier maintained an average PEC evaluation score of 4.0 or greater in each of the last three months, resulting in a three-month average score of 4.2.
- The PEC determined that Captain Pyne Mercier has successfully completed the Pilot Trainee Training Program, and recommended that the Board issue Captain Pyne Mercier a Certificate of Completion from the program, effective March 26, 2020.

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Executive Director Garfinkle confirmed for the Board that Captain Pyne Mercier completed all of the Pilot Trainee Training Program requirements. There was no further discussion and no comments from the Board or the public.

MOTION: Commissioner Hoppes moved to award Captain Pyne Mercier a Pilot Trainee Training Program Certificate of Completion effective March 26, 2020. Vice President Hayes-White seconded the motion.

VOTE: YES: Connolly, Carr, Hayes-White, Hoppes, Nyborg, and Prada.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

E) 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.

Executive Director Garfinkle reported that the Board received an application for licensing from Captain Christopher Pyne Mercier, and that he has met all the Board's requirements for licensure. He recommended to the Board that since there are fewer than 60 pilots, a license be issued to Captain Pyne Mercier. There was no further discussion, and no comments from the Board or the public.

MOTION: Commissioner Nyborg moved to issue a license to Captain Christopher Pyne Mercier. Commissioner Prada seconded the motion.

VOTE: YES: Connolly, Carr, Hayes-White, Hoppes, Nyborg, and Prada.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

President Connolly administered the oath of office to Captain Pyne Mercier.

**9. Reported Safety Standard Violations (Executive Director Garfinkle)
(Reported safety standard violations occurring up to the start of the meeting will be reported on.)**

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

**10. Incident Review Committee—Reportable Piloting Events (Executive Director Garfinkle)
(Reportable piloting events occurring up to the start of the meeting will be reported on.)**

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- A) Status report on the event involving the P/V STAR PRINCESS wherein a tugboat made fast to the P/V STAR PRINCESS made unintended contact with Pier 23 in San Francisco on October 2, 2019. Possible Board action to grant the Incident Review Committee an extension to present the P/V STAR PRINCESS report at the Board meeting to be held on April 23, 2020.**

Executive Director Garfinkle reported that on October 2, 2019, the P/V STAR PRINCESS was mooring at Pier 27, San Francisco (SFO 27), and the assist tug, DELTA CATHRYN, made unintended contact with Pier 23 during the mooring process that resulted in damage to the pier structure. He reported that the 90-day statutory deadline for the report was on December 30, 2019, and that the incident is still under investigation. He requested an extension to present the Investigation Review Committee (IRC) report at the April 2020 Board meeting.

Executive Director Garfinkle responded to a query from Board Counsel Eagan and stated that the IRC is having difficulty obtaining evidence for this incident due to a lack of disclosure from the various parties involved in the event, and that the IRC may consider proceeding with subpoenas or concluding its investigation with the available evidence that it already has. President Connolly noted that he believed it to be beneficial to the Board to have a late IRC report that is thorough, than for the IRC to submit an incomplete report on time.

MOTION: Vice President Hayes-White moved that the Board grant an extension to the Incident Review Committee to present its report on the P/V STAR PRINCESS at the Board meeting to be held on April 23, 2020. Commissioner Carr seconded the motion.

VOTE: YES: Connolly, Carr, Hayes-White, Hoppes, Nyborg, and Prada.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

- B) Status report on the event involving the allision between the T/V POLAR DISCOVERY with the T/V TORM RESILIENCE that was previously moored at the Richmond Long Wharf in Richmond on November 24, 2019. Possible Board action to grant the Incident Review Committee an extension to present the T/V POLAR DISCOVERY report at the Board meeting to be held on April 23, 2020.**

Executive Director Garfinkle reported that on November 24, 2019, the T/V POLAR DISCOVERY allided with the T/V TORM RESILIENCE that was previously moored at the Chevron Long Wharf in Richmond. He reported that there was damage to both ships, to the pier, and to the landing arms that were connected to the T/V TORM RESILIENCE.

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He stated that oil was released, but was contained on the deck of the T/V TORM RESILIENCE, and that no oil went into the water.

Executive Director Garfinkle stated the investigation is ongoing, the 90-day statutory deadline date was February 21, 2020, that the incident is still under investigation, and he requested an extension to present the IRC report at the April 2020 Board meeting. He reported the pilot involving in this incident is undergoing medical assessment by the Board's physicians, and is currently not piloting. He also stated there is no risk to the public due to the delay in presenting this report.

MOTION: Commissioner Nyborg moved that the Board grant an extension to the Incident Review Committee to present its report on the T/V POLAR DISCOVERY at the Board meeting to be held on April 23, 2020. Commissioner Hoppes seconded the motion.

VOTE: YES: Connolly, Carr, Hayes-White, Hoppes, Nyborg, and Prada.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

C) Status report on the event involving unintended contact of the M/V VINCENT GENESIS with Levin's Terminal (RCH 20) in Richmond on December 13, 2019. Possible Board action to grant the Incident Review Committee an extension to present the M/V VINCENT GENESIS report at the Board meeting to be held on April 23, 2020.

Executive Director Garfinkle reported that on December 13, 2019, the M/V VINCENT GENESIS made unintended contact with the corner of Levin Terminal in Richmond (RCH20), and caused damage to the wooden structure of the pier. He reported that the report is not yet complete due to staff workload, that the 90-day statutory deadline was on March 11, 2020, and requested an extension to present the IRC report at the April Board meeting.

MOTION: Commissioner Hoppes moved that the Board grant an extension to the Incident Review Committee to present its report on the M/V VINCENT GENESIS at the Board meeting to be held on April 23, 2020. Commissioner Carr seconded the motion.

VOTE: YES: Connolly, Carr, Hayes-White, Hoppes, Nyborg, and Prada.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

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11. Significant Port Safety and Security Cases Report (Executive Director Garfinkle)

Report on marine casualties, navigational safety and significant incident management cases relevant to the Board as reported by the U.S. Coast Guard in its Prevention / Response – San Francisco Harbor Safety Statistics report for February 2020.

Executive Director Garfinkle reported that the February 2020 Prevention/Response – San Francisco Harbor Safety Statistics report noted that there were three loss of propulsion events, and one reduction in propulsion event, and none of the events involved BOPC-licensees.

12. Finance Committee (Commissioner Hoppes)

A) Report on the Finance Committee meetings held on March 18, 2020.

Commissioner Hoppes reported that the Finance Committee met on March 18, 2020, that the Committee reviewed the Board’s financial statements and budget for fiscal year 2019-20, reviewed information on surcharges set by the Board, and reviewed the 2018 pilotage and surcharge audit prepared by the State Controller’s Office.

B) Finance Committee recommendations to the Board on the following Board surcharges:

- 1. To adjust or not adjust the Board Operations Surcharge rate (currently 2.75% of all pilotage fees). Possible Board action to adjust the Board Operations Surcharge rate.**
- 2. To adjust or not adjust the Pilot Continuing Education Surcharge rate (currently \$35 per move). Possible Board action to adjust the Pilot Continuing Education Surcharge rate.**
- 3. To adjust or not adjust the Pilot Trainee Training Surcharge rate (currently \$10/trainee/move). Possible Board action to adjust the Pilot Trainee Training Surcharge rate.**
- 4. To adjust or not adjust the Navigation Technology Surcharge rate (currently at \$40/move). Possible Board action to adjust the Navigation Technology Surcharge rate.**

Commissioner Hoppes reported that the Committee determined that there was no need to change any of the Board’s surcharge rates, and noted the Committee will keep monitoring the surcharges given recent reductions in shipping activity. He stated the

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Finance Committee voted to recommend to the Board to maintain the current surcharge rates for the Board Operations, Pilot Trainee Training, Pilot Continuing Educations and Navigation Technology surcharges.

MOTION: Commissioner Nyborg moved that the Board Operations, Pilot Continuing Education, Pilot Trainee surcharges, and Navigation Technology surcharges remain at 2.75% of all pilotage fees, \$35 per move, \$10/trainee/move, and \$40/move, respectively.

Commissioner Prada seconded the motion.

VOTE: YES: Connolly, Carr, Hayes-White, Hoppes, Nyborg, and Prada.
NO: None.

ABSTAIN: None.

ACTION: The motion was approved.

C) Review of the pilotage and surcharge audit report for the 2018 calendar year, dated March 17, 2020, prepared by the State Controller’s Office under contract with the Board. (Executive Director Garfinkle/Assistant Director Cristia-Plant)

Commissioner Hoppes reported that the Committee reviewed the pilotage and surcharge audit report for the 2018 calendar year, dated March 17, 2020, prepared by the State Controller’s Office under contract with the Board. He noted that one exception was found related to a trainee that had graduated from the pilot trainee program in the middle of the month, and the SFBP continued to collect the surcharge for that trainee for the remainder of that month. Captain McIntyre stated that the SFBP has taken measures to prevent such overcharges in the future.

13. Navigation Technology Equipment and Software Acquisition Update (SFBP Business Director McIntyre)

Status report on the SFBP’s navigation technology equipment and software implementation.

Captain McIntyre reported that there were no updates regarding navigation technology equipment and software acquisition to report.

14. Presentation and discussion of a request for reasonable accommodation from Captain Carl Martin regarding a medical condition in connection with required manned-model training (Executive Director Garfinkle)

Possible Board deliberation and decision on:

A) Captain Martin’s medical condition.

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B) Whether that condition requires a reasonable accommodation in connection with attendance at mandated manned-model training at Port Revel, France.

C) What reasonable accommodation should be accorded Captain Martin.

The Board may go into closed session to discuss Captain Martin’s confidential medical reports as authorized by Harbors and Navigation Code § 1157.1.

President Connolly stated the Board took action at the last Board meeting on this agenda item, and directed the Executive Director to obtain additional information from the Board’s physicians regarding Captain Martin’s request. Executive Director Garfinkle reported that he has not received any additional information from the Board Medical Review Officer regarding Captain Martin since the last Board meeting. There was no further discussion, and no closed session.

15. Public comment on matters not on the agenda.

President Connolly clarified for Mr. Paetzold that he renewed Captain Robinson’s appointment to the PEC at the February 2020 Board meeting with the consent of the Board since the action was not included in the February 2020 agenda, and that it was the Board’s intent at that time that it would officially ratify his action at this month’s Board meeting, which it did.

Members of the Board and staff thanked Mr. Paetzold for his many years of excellent service to the Board. Mr. Paetzold stated that he will continue to provide on-call service to the SFBP as a contractor instead of an employee.

Executive Director Garfinkle confirmed for Commissioner Prada that he is in the process of filling the newly vacant Pilot Trainee Training Program slot with a candidate from the 2019 trainee eligibility list, and that the candidate is currently making arrangements to obtain a medical assessment from the Board’s physicians. He further noted that had already contacted the two remaining candidates from the 2017 trainee eligibility list, and stated that one candidate declined the invitation and requested to be deferred to the bottom of the list since he is currently in a pilot training program in Baltimore, and that the other candidate requested to be removed from the 2017 list since he is already a pilot with the Puget Sound Pilots.

16. Proposals for the next Board meeting agenda.

Commissioner Nyborg requested that the Board discuss at its next meeting the status of pilot and trainee medical assessments and pilot continuing education requirements in light of the current pandemic. Board Counsel Eagan noted that the Board does not have the authority to

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waive statutory or regulatory requirements, that it could consider emergency regulations, but an executive order from the Governor waiving certain legal requirements would be more timely.

17. Adjournment.

President Connolly adjourned the meeting at 11:00 a.m.

Submitted by:



Allen Garfinkle
Executive Director