

<p>Meeting Date:</p> <p>July 22, 2021</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 13</p>
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Board Members Present

Joanne Hayes-White, President, Public Member
Jennifer Ferrera Schmid, Vice President, Public Member
Captain Robert Carr, Pilot Member
Captain Einar Nyborg, Pilot Member
Karen Tynan, Public Member
Captain Oscar Prada, Tanker Company Industry Member
Stephanie Dougherty, Designee of the Secretary of the California State Transportation Agency (CalSTA)

Board Members Absent

Vacant, Dry Cargo Industry Member

Board Staff Present

Allen Garfinkle, Executive Director
Dennis Eagan, Board Counsel
Brenda Pugh, Staff Services Manager I
Alethea Wong, Administrative Assistant II

Identified Public Present

Captain Zachary Kellerman, San Francisco Bar Pilots (SFBP) Acting Port Agent; Captain Anne McIntyre, SFBP Business Director; Captain Drew Aune, SFBP; Mike Jacob, Pacific Merchant Shipping Association (PMSA) Vice President and General Counsel; Captain Eric Weber, BOPC Pilot Trainee; John Schneider, Marathon Petroleum; Kevin Baldwin; Bullivant Houser; and Alfredo Medina.

OPEN MEETING AGENDA

1. Call to Order and Roll Call (President Hayes-White)

President Hayes-White 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 Hayes-White)

Board action to approve the minutes from the Board meeting held on May 27, 2021.

Board members were presented with the draft meeting minutes from May 27, 2021. SFBP Business Director Captain McIntyre noted that she presented catastrophic cost data and the minutes did not include them. Capt. McIntyre suggested it would be helpful if the information were included in agenda item 14. There was no further discussion.

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MOTION: Commissioner Nyborg moved to approve the draft minutes from the meeting on May 27, 2021, as amended. Vice President Schmid seconded the motion.

VOTE: YES: Hayes-White, Schmid, Carr, Nyborg, and Tynan.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

3. Review and approval of Board meeting minutes (President Hayes-White)

Board action to approve the minutes from the Board meeting held on June 23, 2021.

Board members were presented with the draft meeting minutes from June 23, 2021. Executive Director Garfinkle reported that there were additional changes to the minutes that were non-substantive. However, there were significant updates to agenda item 14 regarding the Pilot Continuing Education Committee, and the following changes were made to the information regarding square footage of the lake for clarity purposes: *the Committee members worked to quantify the requirement of 40,000 square meters by obtaining objective evidence of the area required for water exercises that are conducted simultaneously.* Commissioner Nyborg requested minor edits to the minutes. SFBP Business Director Captain McIntyre confirmed that she presented catastrophic cost data where the minutes did not include that information. She will forward the data to Board staff to include in the minutes. Board Counsel Eagan requested minor edits to the minutes, and Executive Director Garfinkle confirmed that the edits were included in the minutes. There was no further discussion.

MOTION: Commissioner Carr moved to approve the draft minutes from the meeting on June 23, 2021, as amended. Vice President Schmid seconded the motion.

VOTE: YES: Hayes-White, Schmid, Carr, and Nyborg.
NO: None.
ABSTAIN: Tynan.

ACTION: The motion was approved.

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

Mr. Jacob announced that the Oakland City Council extended negotiations on the proposed terms for the A's waterfront stadium. The project is moving forward but one of the revisions discussed in City Council meeting was to work on the seaport compatibility measure process underway at the port. There is a private meeting scheduled for July 27, 2021, that is open to maritime stakeholders only. He wanted to extend the invitation to Board staff and the Commissioners, and to contact him if anyone was interested in attending.

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5. President Announcements and Activities (President Hayes-White)

President Hayes-White wanted to discuss the possibility of resuming in-person Board meetings in September. She asked that everyone provide input regarding this issue during the August 2021 Board meeting as there is a new variant, which may make attendees hesitant to resume in-person meetings.

President Hayes-White thanked the members of the Ad Hoc Committee to Review the Pilotage Rate Setting Process for their work, and stated that an update of their recent meeting isn't on the agenda.

President Hayes-White reported that she had a discussion with Past-President Mike Miller, current Chair of the Pilot Fitness Committee and noted that a lot of work has been done to update the pilot fitness regulations, which are currently pending approval (by the Office of Administrative Law).

President Hayes-White received a letter from Port Agent Carlier making recommendations to increase diversity through changes in the trainee candidate selection process. The letter was presented at the June 2021 Board meeting, where Board members discussed it briefly. Vice President Schmid, and Commissioners Tynan, Carr, and Prada expressed their interest in being on the Committee, and SFBP Business Director Captain McIntyre and Commissioner Nyborg expressed interest in assisting the Committee. Ms. Dougherty stated that CalSTA is also interested in assisting the Committee with exploring possible options and volunteered to assist if Board staff need more administrative support. President Hayes-White requested that Board staff schedule the Committee meeting. She added that the topic is an important one and it is important that we develop a fair process, one that promotes diversity while keeping in mind safety issues as well.

Commissioner Nyborg expressed concern with the timeline for the regulatory changes to amend the Pilot Trainee Training Program. He suggested that the Pilot Trainee Training Program Selection Examination be postponed for several months to allow the regulatory changes to be enacted. If the changes to increase the program's diversity take longer or are unable to be applied to the upcoming exam, then the changes will not be effective until the 2024 exam, with the results not being evident until those pilots are working in 2026.

Commissioner Tynan commented that during her Senate Confirmation interview, she was asked questions regarding how she was going to address the lack of diversity amongst the pilots.

Executive Director Garfinkle reiterated that President Hayes-White was creating a committee with committee members Schmid, Carr, Prada, and Tynan. He then reported that based on

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the Committee members' availability for the Ad Hoc Committee on Pilot Diversity, Board staff will be scheduling the meeting for August 3, 2021, at 9:30 a.m., and the agenda will need to go out very soon.

6. Board Member Announcements and Activities (Board Members)

Committee Chair Captain Carr reported that the Ad Hoc Committee to Review the Pilotage Rate-Setting Process met on July 13, 2021, to continue the review of the rate-setting process. The Committee considered the rate-setting processes used in Washington, Oregon, and Hawaii, to see if the Board would like to adopt any of their processes. In all three examples, an administrative law judge was used to a certain extent, and both SFBP and PMSA agree that having an Administrative Law Judge participate in the rate process is a concept worth pursuing. Carr also reported that PMSA agreed that other states' processes are better than the Board's current process.

The Committee reviewed the various issues with the Board's current process and considered the possibility of removing the Legislature from the rate-setting process, in favor of an administrative law judge. Committee members were not able to fully review Hawaii's process, therefore the Committee discussed it briefly. Carr reported that the Committee will meet again on August 4, 2021, at 2:00 p.m. The Committee is making progress and is expected to present a recommendation at the Board meeting in October 2021. Committee Chair Carr reported that he, Commissioner Prada, and Commissioner Tynan are on the Committee, and that PMSA and SFBP participate as non-voting members.

President Hayes-White reported that Commissioner Prada is unable to attend the Board meeting due to an urgent commitment.

Ms. Dougherty reported that she and David Kim, the Secretary of the California State Transportation Agency (CalSTA), met with the SFBP Port Agent, Captain Carlier.

7. Directors' Report (Executive Director Garfinkle)

A) Correspondence and activities since the Board meeting held on June 23, 2021.

Executive Director (ED) Garfinkle reported on the following:

- On June 21, 2021, Board staff received a Public Records Act (PRA) request from the *Center for Organizational Research and Education*, asking for copies of any expenses, activities, and staff positions that relate to, or are dedicated to diversity, equality, and inclusion (DEI) at the Board of Pilot Commissioners. ED Garfinkle responded to the PRA request.

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- On June 23, 2021, Board staff received a copy of the PMSA *West Coast Trade Report* for June 2021. It contained the April twenty-foot equivalent unit (TEU) numbers, a commentary by Jack O’Connell, and a piece written by John McLaurin titled, *Facts are Stubborn Things*, discussing the backlog in the supply chain.
- On June 25, 2021, Board staff received a copy of a *gCaptain* article discussing the legal aspects of the EVER GIVEN grounding in the Suez Canal, and the implications for pilots. The article included other maritime incidents including the 2007 COSCO BUSAN event.
- On July 1, 2021, and July 9, 2021, the ED participated in interviews for the Assistant Director position at the Board.
- On July 13, 2021, Board staff attended the Ad Hoc Committee to Review the Pilotage Rate-Setting Process.
- On July 8, 2021, the ED received a Pilot Ladder Safety handbook, authored by Herman Broers. The handbook provided information on all aspects of pilot ladder safety, including how to approach a ladder by boat.
- On July 14, 2021, the ED attended an entrance conference with staff members from the Office of the State Controller (SCO), who are conducting the Board’s 2020 surcharge audit.
- Also on July 14, 2021, the ED received an Engagement Letter from SCO staff outlining the audit procedures. A similar letter was sent to the SFBP staff.
- On July 21, 2021, Board staff received a copy of the PMSA *West Coast Trade Report* for July 2021. It contained a report on the June TEU numbers, comparing June 2021 to June 2019, a look back at the May TEU numbers, and a commentary by Jack O’Connell focused debunking the story that almond shipments are being siphoned off to Houston, instead of the Port of Oakland.

B) Report on pilot licensing matters since the Board meeting held on June 23, 2021.

Executive Director Garfinkle reported that since the June Board meeting, the Board renewed the licenses of Captains Crowl and Slack.

C) Report on Board surcharges.

Executive Director Garfinkle reported that the SFBP wired to the Board the surcharges collected in June 2021 in the amount of \$246,084.83, itemized as follows:

- Board Operations Surcharge: \$132,309.83
- Continuing Education Surcharge: \$ 29,695.00
- Pilot Trainee Surcharge: \$ 84,080.00

D) Report on outstanding requirements of Board actions in response to Board determination and direction on Incident Review Committee reports.

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Executive Director Garfinkle reported that there are no outstanding items to report.

E) Report on legislative activities and contractual matters.

Staff Services Manager I Pugh reported that on July 6, 2021, Assembly Bill 807, authored by Grayson, was passed by the Committee on Government Organization in the Senate, and was referred to the Appropriations Committee.

Staff Services Manager I Pugh reported that on July 21, 2021, the Pilot Fitness regulations were submitted to the Office of Administrative Law (OAL). The final amended regulation text is expected to be published beginning October 2021.

Staff Services Manager I Pugh reported the following contractual matters:

- The current manned model contract ends on June 30, 2022. California Highway Patrol (CHP) and Board staff are writing the request for proposals, which is expected to go out to all vendors for response in September 2021.
- The amendment to the current San Francisco Bar Pilots contract requires justification for non-competitive bid per the attorneys at the Department of General Services.
- A new interagency agreement with the Regents of the University of California for continued pilot and trainee medical assessments from physicians at the University of California, San Francisco (UCSF) is under review by UCSF staff.
- The contract for FedEx will expire in November 2021 and the contract for Citibank will expire in October 2021. Board staff will work in conjunction with CHP to submit requests for new contracts.

Executive Director Garfinkle clarified for Commissioner Carr that no comments were received on the Fitness Regulation package. Commissioner Nyborg commented on the benefits that the new fitness regulations will confer on SFBP and the Board. He also inquired whether classes have been scheduled for Port Revel for next spring, to which Executive Director Garfinkle responded that none have been scheduled thus far. Commissioner Nyborg noted that it would be good to get those scheduled prior to the contract expiration date.

Commissioner Carr inquired about who was behind the PRA request on diversity, equity, and inclusion, and the Executive Director replied that he did not have that information but that the PRA request was widespread. Commissioner Nyborg inquired about the UCSF contract and when it expires. The Executive Director confirmed that the UCSF contract can be backdated so that there is no interruption to services due to contracting issues. Vice President Schmid is aware of Board staff's heavy workload and thanked them for their efforts. Executive Director Garfinkle responded to SFBP Business

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Director Captain McIntyre that the UCSF contract does not include performance standards for turnaround time, which can be difficult to quantify, and especially with the individual nature of medical assessments.

8. Port Agent’s Report (Port Agent Carrier)

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

Acting Port Agent Captain Kellerman reported that the following pilots were absent for medical reasons (AFMR):

- Captain Kasper – June 11, 2020
- Captain McCloy – April 20, 2021
- Captain Pyne Mercier – April 25, 2021
- Captain Alden – April 30, 2021
- Captain Haggerty – June 14, 2021

Acting Port Agent Kellerman reported that the SFBP continually monitors the dispatch list for possible 12-hour minimum rest period (MRP) exceptions. For any potential exception that is likely to result in a rest period of less than 10 hours, SFBP will ensure that mitigating measures are enacted. He reported that mitigating measures include, but are not limited to, suspending continuing professional development protocols, canceling scheduled 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 53 licensed pilots. There were 11 MRP exceptions in June, and the shortest rest period was 10.3 hours.

B) Monthly report on SFBP ship piloting business activity.

For the month of June 2021, Acting Port Agent Kellerman reported normal operations for P/V CALIFORNIA, P/V PITTSBURG, P/V DRAKE, and P/V GOLDEN GATE. P/V SAN FRANCISCO was not in service on June 22, 2021, due to topside paint and generator rebuilds.

Acting Port Agent Kellerman reported that the billed vessel moves for June 2021 were as follows:

- Bay Crossings: 403 moves
- Bay Moves: 131 moves
- River Moves: 78 moves
- Total Moves: 612 moves

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- Gross Registered Tons (GRT): 21.1 million

He also reported that when comparing 2021 year-to-date vessel move data with the same period in 2020, total moves were down 2.9% and GRT was down 16.3%.

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.

Commissioner Nyborg requested discussion of this item during closed session. President Hayes-White deferred this agenda item towards the end of the meeting.

9. Pilot Evaluation Committee (Captain Robinson)

A) Report on the Pilot Evaluation Committee (PEC) meeting held on July 14, 2021.

PEC Committee Member Captain Aune reported on the following:

- The PEC met on July 14, 2021, and in attendance were Captains Aune, Ruff (arrived for second trainee interview), Slack, Wehr, and Robinson.
- The PEC provided Executive Director Garfinkle with a report of trainee activity over the past month.
- The PEC Committee discussed the next Pilot Trainee Training Program Selection Examination, scheduled to be held in the summer of 2022. Captain Robinson communicated with Captain Gates regarding the development of the simulator portion of the upcoming examination. The PEC members are tentatively scheduled to meet with Captain Gates at the California State University Maritime Academy on July 30, 2021.
- Trainees were interviewed and individually counseled on their progress in the Pilot Trainee Training Program in closed sessions with the PEC members.
- There are currently eight trainees, including: Captains Adams, Barnum, Murney, Olmsted, Pascucci, Sappington, Snap, and Weber. The trainees’ range of time in the program is 3 months to 22 months.
- Captain Murney was issued First-Class pilotage endorsements for unlimited tonnage on San Francisco Bay by the U.S. Coast Guard (USCG). He is in the evaluation stage of the Pilot Trainee Training Program, and is handling vessels as much as possible along with the occasional observation trip to watch a licensed pilot.
- Captain Adams is handling and waiting on the issuance of his full San Francisco Bay pilotage endorsement.
- Captain Weber has completed testing and is handling in all areas.

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- Captains Barnum, Olmsted, Pascucci, Sappington, and Snapp are acquiring route trips and are handling vessels in all areas where they meet the present requirements.
- 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 August 18, 2021, at 7:30 a.m. at the Board office.

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 was no recommendation.

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

There was no recommendation.

D) Possible recommendation from the Executive Director for the Board to issue a state pilot license to a trainee who holds a Certificate of Completion from the Pilot Trainee Training Program. 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 was no recommendation.

Commissioner Nyborg thanked the PEC for their report and noted that the more details provided have been helpful.

**10. 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.

**11. 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 an interaction between the M/V HYUNDAI NEPTUNE, the M/V HANOVER EXPRESS and the M/V THALASSA AVRA causing the M/V THALASSA AVRA to have multiple parted lines and making contact with a container crane at Berth 37 in Oakland, California on May 21, 2020. Possible Board action to grant the Incident Review Committee an extension to present the M/V HYUNDAI NEPTUNE and the M/V HANOVER EXPRESS report at the Board meeting to be held on August 18, 2021.**

Executive Director Garfinkle reported that a subpoena is needed to continue the investigation, therefore the IRC requests an extension to the August Board meeting complete the investigation and present its report to the Board.

- B) Status report on the M/V GLOBE PEGASUS allision with several pilings at Levin Terminal in Richmond, CA, on April 8, 2021. Possible Board action to grant the Incident Review Committee an extension to present the M/V GLOBE PEGASUS report at the Board meeting to be held on August 18, 2021.**

Executive Director Garfinkle reported that the investigation is not completed yet and is requests an extension to present its report at the August Board meeting. There are no safety concerns due to the delay of the report.

MOTION: Commissioner Carr moved that the Board grant an extension to the Incident Review Committee to present its report on the M/V HANOVER EXPRESS and M/V GLOBE PEGASUS at the Board meeting to be held on August 26, 2021. Commissioner Nyborg seconded the motion.

VOTE: YES: Hayes-White, Schmid, Carr, Nyborg, and Tynan.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

12. 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.

Executive Director Garfinkle reported that the June 2021 Prevent/Response – San Francisco Harbor Safety Statistics report included a description of one reduction of propulsion incident. A U.S. flag ship experienced an engine failure during approach to Chevron Long Wharf in Richmond, but the vessel never lost propulsion due to operational second engine. The vessel was diverted from its destination to Anchorage 5 and the case was closed.

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13. Status report on the replacement of the P/V GOLDEN GATE, regarding which the Board approved a Preliminary Determination for the purchase of a replacement vessel and eventual recovery of costs to the pilots in an amount of \$8,820,679.00 on November 12, 2020, and discussion of future pilot vessel needs of Board-licensees. (SFBP Business Director Captain McIntyre)

Commissioner Carr commented that there is no value in keeping this agenda item, and recommended its removal from the agenda unless there are updates or a need for the Board to discuss. President Hayes-White agreed.

14. Discussion of pilot revenue losses due to reduction in vessel traffic caused by the COVID-19 pandemic. (President Hayes-White)

Captain McIntyre deferred to Mike Jacob to report progress on AB 807. Mike Jacob reported that the language that SFBP, PMSA, and WSPA have been working on is under review to address issues that are relatively short term in nature, and represent consensus between the parties on some increases in revenue to the pilots for specified purposes. Once these are agreed to they will be made public and shared with the Commission. He thanks SFBP and the other industry partners for working with them to make this happen. These represent small steps, but ones that everyone can all agree are places where we can increase pilot revenue. He also thanked the pilots for their role in reducing the backlog of vessels at anchor and offshore.

Captain McIntyre commented that the revenue conditions are still grim, with all revenue down over last year (which was well into the COVID downturn), and repeated that bar crossings year to date compared to 2019 are down 24.3%, total vessel moves compared to 2019 are down 17.5%, and gross registered tonnage is down 27.6% or 51 million tons. Pilotage fees versus 2019 year to date are down 24%. This year is worse than last year, and all indications are that there will be significant supply chain disruptions into next year. We continue to work with all industry partners to solve this problem. She also made the point that the upward trend in port throughput is all about tracking TEU's (twenty foot equivalent units – a measurement of containers) and not about the number of ships.

Commissioner Nyborg added that a ship he worked recently experienced seven days offshore, seven days at anchor, and seven days alongside in Oakland. He noted that as a result of the disruptions, many companies are just skipping Oakland, which results in a loss of revenue to all concerned. He further noted that the problem is not going away or changing for the better.

15. Incident Review Committee report on the M/V THALASA AVRA event involving vessel interaction between the M/V HYUNDAI NEPTUNE and subsequently the M/V HANOVER EXPRESS, in the Port of Oakland on May 21, 2020. (Vice President Schmid/Executive Director Garfinkle)

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A presentation of the Incident Review Committee report on the event involving the M/V HYUNDAI NEPTUNE and M/V HANOVER EXPRESS passing the moored M/V THALASSA AVRA causing the M/V THALASSA AVRA to part lines and make contact with a container gantry on May 21, 2020. Board deliberation of the Incident Review Committee’s recommendations to the Board and determination regarding the event involving the M/V HYUNDAI NEPTUNE AND M/V HANOVER EXPRESS interaction with the M/V THALASSA AVRA. The Board may go into closed session for the deliberation of the incident report presented under this item pursuant to Harbors and Navigation Code §1180.6(a) and Government Code §11126(c)(3) and (e)(1).

President Hayes-White noted that this agenda item has been granted an extension and was addressed under agenda item 11A.

16. Public comment on matters not on the agenda. (President Hayes-White)

There were no comments from the public.

17. Proposals for the next Board meeting agenda. (President Hayes-White)

President Hayes-White requests that the next Board agenda include an opportunity for the Board to discuss the possibility of having in-person meetings again.

Commissioner Carr inquired about the status on the fatigue regulations. Board Counsel Eagan commented that he is working on the draft regulations to capture the general discussion, and will try to have the draft done by August.

Vice President Schmid reported the Ad Hoc Committee on Pilot Diversity will be meeting in August and will be on the next Board meeting agenda.

8C) 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.

President Hayes-White called for a short recess.

RECESS STARTED: 10:52 a.m.
RECESS ENDED: 11:00 a.m.

CLOSED SESSION BEGAN: 11:00 a.m.
OPEN SESSION RESUMED: 11:45 a.m.

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18. Adjournment.

- MOTION:** Commissioner Carr moved to adjourn the meeting. Vice President Schmid seconded the motion.
- VOTE:** YES: Hayes-White, Schmid, Carr, Nyborg, and Tynan.
NO: None.
ABSTAIN: None.
- ACTION:** The motion was approved, and the meeting was adjourned at 11:45 a.m.

Submitted by:



Allen Garfinkle
Executive Director