

<p>Meeting Date:</p> <p>May 26, 2022</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 23</p>
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Board Members Present

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

Board Members Absent

Joanne Hayes-White, President, Public Member (Called into meeting; restricted to listening, and not able to participate or vote)
 Vacant, Dry Cargo Industry Member

Board Staff Present

Allen Garfinkle, Executive Director
 Dennis Eagan, Board Counsel
 Jennifer Barton, Assistant Director
 Alethea Wong, Administrative Assistant II

Identified Public Present

Knute Michael Miller, Past Board President; Captain John Carlier, San Francisco Bar Pilots (SFBP) President and Port Agent; Captain Anne McIntyre, SFBP Business Director; Mike Jacob, Pacific Merchant Shipping Association (PMSA) Vice President and General Counsel; Roma Cristia-Plant; and Captain James Barton, 2019 Pilot Trainee Training Program Selection Examination candidate.

OPEN MEETING AGENDA

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

Vice President Schmid called the meeting to order at 9:31 a.m. Administrative Assistant II Wong called the roll and confirmed a quorum.

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

A) Board action to approve the minutes from the Board meeting held on January 27, 2022.

Board members were presented with the draft minutes from January 27, 2022. Commissioner Carr requested for minor edits. There was no further discussion.

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MOTION: Vice President Schmid moved to approve the draft minutes of the meeting held on January 27, 2022, as amended. Commissioner Prada seconded the motion.

VOTE: YES: Schmid, Carr, Nyborg, Prada, and Tynan.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

B) Board action to approve the minutes from the Board meeting held on April 21, 2022.

Board members were presented with the draft minutes from April 21, 2022. Ms. Dougherty requested minor edits. There was no further discussion.

MOTION: Commissioner Carr moved to approve the draft minutes of the meeting held on April 21, 2022, as amended. Commissioner Tynan seconded the motion.

VOTE: YES: Schmid, Carr, Nyborg, and Tynan.
NO: None.
ABSTAIN: Prada.

ACTION: The motion was approved.

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

President Hayes-White commented that she called in to listen, but will not be able to participate, and thanked Vice President Schmid for chairing the meeting.

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

There were no announcements.

5. Board Member Announcements and Activities (Board Members)

Commissioner Carr reported that Board staff was able to schedule a Pilot Boat Advisory Committee meeting for June 16, 2022, but he is unable to attend, and requests that Board staff survey the rest of the Committee members and try to secure a different date for the Committee meeting.

Commissioner Carr noted that the Pilot Trainee Training Program Selection Examination is coming up in June 2022, and the interview section is new. He stated the Board needed to establish which commissioners would be involved in the interview process and asked

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President Hayes-White to establish the group as soon as possible. Commissioner Carr volunteered to participate in the interview process.

Vice President Schmid stated she attended the May Day and Maritime Celebration event on May 12, 2022. She met with alumni and industry members and the event was well attended.

Commissioner Tynan mentioned the Women In Logistics organization is a great way for women in logistics to network and is made up of many members the Board knows and supports. There is a Golf Tournament planned for June 3, 2022.

Commissioner Prada noted on May 18, 2022, he reviewed the simulator portion of the upcoming exam with the Executive Director. He also volunteered to participate in the interview process.

Commissioner Carr noted one pilot, one industry, and one public member are needed for the interview process.

6. Executive Director's Report (Executive Director Garfinkle)

A) Correspondence and activities since the Board meeting held on April 21, 2022.

Executive Director Garfinkle reported on the following:

- On April 22, 2022, Board staff held an initiation for Captain Meyer, a new trainee. Captain Robinson, chair of the PEC, attended as well.
- On April 27, 2022, he attended a simulator development session at Cal Maritime along with several members of the PEC and a representative of Cal HR.
- Also, on April 27, 2022, he confirmed the participation of Captain Wendy Morrison, a Galveston Pilot, as an evaluator in the selection exam.
- On May 10, 2022, he attended a Finance Committee meeting.
- On May 12, 2022, he confirmed the participation of Captain Colleen Moran, a Delaware Pilot, as a simulator evaluator in the selection exam.
- On May 13, 2022, Board staff notified the selection exam candidates of their qualifying status by email.
- On May 16, 2022, he attended a Selection Appeal Committee meeting. There were ten appeals, four of which were successful.
- On May 18, 2022, he attended a simulator development session at Cal Maritime.
- On May 25, 2022, he attended a meeting of the Pilot Evaluation Committee.
- On May 25, 2022, he met with Secretary Omishakin and briefed him on issues relevant to the Board.

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B) Report on pilot licensing matters since the Board meeting held on April 21, 2022.

Executive Director Garfinkle reported that since the April Board meeting, the Board has issued license renewals to Captains Kasper, Weiss, Deisher, and McCloy.

C) Report on Board surcharges.

Executive Director Garfinkle reported that for the month of March, the Board received \$259,429.57 in surcharge revenues from SFBP as follows:

- Board Operations \$145,085.39
- Continuing Education \$ 30,211.70
- Trainee Training \$ 84,132.48

Executive Director Garfinkle reported that for the month of April, the Board received \$269,418.96 in surcharge revenues from SFBP as follows:

- Board Operations \$155,070.71
- Continuing Education \$ 30,144.15
- Trainee Training \$ 84,204.10

Executive Director Garfinkle reported on the following as the Pension Fiduciary:

- As of May 1, 2022, there are 84 pensioners and one disability pension pending.
- The pension surcharge rate has been set for the second quarter of 2022 at \$0.05535, based on a 12-month tonnage lookback period from January 2021 through December 2021.
- The surcharge rate for April was \$0.05535, and the tonnage for April was 22,735,902, resulting in collections totaling \$1,258,432, on a target of \$1,147,180, resulting in a variance of \$111,252 over target (compared to the March 2022 variance of \$57,357 over target).
- The administrative costs for the month totaled \$2,145, resulting in a total distribution of \$1,256,287 for April.
- The last COLA increase to the pension was April 1, 2020.

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

Executive Director Garfinkle reported, in response to the Board's order related to the HYUNDAI NEPTUNE incident, that Captain Drew Aune provided him with a Lessons

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Learned Report on May 20, 2022. Captain Drew Aune had presented the report to the SFBP members on May 11, 2022.

E) Report on legislative activities and contractual matters.

Assistant Director Barton reported on the following:

Report on Legislative Matters:

- AB 2056, Introduced by Assembly Member Grayson on February 14, 2022, proposes to amend Harbors and Navigation Code section 1190.2. The purpose of this amendment ostensibly is to ensure requirements of any rule governing the emissions of commercial harbor craft imposed by the State Air Resources Board are included in the determination of pilotage rates, but may be a placeholder for broader legislative initiatives involving pilotage rates.

Bill status as of May 25, 2022: On May 16, 2022, the Assembly adopted an urgency clause prior to passing and moving the bill to the Senate. The urgency clause declares the bill will take effect immediately as an urgency statute. The first Senate reading took place on May 17, 2022. The Rules Committee will now assign the bill for hearing before the appropriate committees.

Report on Contractual Matters:

New/Renewing:

- UC Regents University of California San Francisco (UCSF) Pilot/Trainee Medical Assessments: Board staff was anticipating adding a second examining physician to the contract with USCF, however, on May 20, UCSF informed us they will not be adding the second examining physician at this time. CHP sent the agreement to UCSF for signing on May 20. (Estimated completion date is June 30, 2022)
- Manned Model Training Services: ARTELIA has provided proposed changes to the draft agreement. The amendments include removing language pertaining to insurance requirements and adding language to limit liability to the dollar amount of the contract. Due to the nature of the proposed changes, they are being reviewed by CHP, DGS, and Board Counsel. (Estimated completion date is July 31, 2022)
- Trainee Drug Testing: Board staff has obtained vendor quotes for a fair and reasonable agreement. CHP is working on processing an award to the lowest bidder, American Maritime Safety, Inc. The contractor will provide random, ad-hoc, and post-marine incident testing for the pilot trainees. (Estimated completion date is June 30, 2022)

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- California State University Maritime Academy (CMA)/Pilot Trainee Training Program: On April 26, the contract process was placed on hold until we can determine when we will need CMA's services for developing the next exam. This contract period was scheduled to begin 7/1/2022. However, as the next exam is happening in June 2022, we may not need these services until FY 23/24. Board staff confirmed with CHP's budget analyst that we can hold off on this contract until the year of the next exam development, and, for the ease of accounting, the total contract can be encumbered in the year of the exam when the invoices come in. (On hold.)
- X-number service orders for the exam evaluators: CHP has issued four X- number service orders for four exam evaluators. Two of the evaluators are in-state and the other two are out-of-state. Their experience and locality meet the requirements of section 213(i)(1) of the regulations. (one state licensed pilot from another jurisdiction and one who is an industry representative with current or prior command on deep-draft vessels). (Completed)
- State Controller's Office: Board staff is working with SCO and CHP to amend the Schedule of Agreed-Upon Procedures to include the Pilot Dispatch System and Pilot Boat Maintenance Surcharges, which became effective on 9/16/2021. We've sent the amended agreed-upon procedure language to SCO and are waiting to find out what the budget impacts will be, based on the new work.

Vice President Schmid inquired about the evaluator reimbursements and the downside of not having a second examiner with UCSF, and commented she was happy the trainee drug testing contract is moving forward. Assistant Director Barton clarified the evaluators would be receiving a per diem rate to cover services and any travel expenses and that the reimbursement amount was agreed upon by the evaluators. Assistant Director Barton explained the additional examining physician would have been helpful to reduce the time it takes for a fit-for-duty determination to be issued.

Commissioner Nyborg inquired about the pension COLA increase and whether Board staff can reserve a week in September for the manned-model training. Assistant Director Barton reported Board staff reviewed the Consumer Price Index on April 12, 2022, and found the annual calculation remains the same, but the point-to-point calculation has changed. When comparing February 2020 to February 2022, the change is an increase of 6.8421%, which does not exceed 12%, which would permit a COLA. Executive Director Garfinkle said he would reach out about reserving a week with ARTELIA but the contract process is still in progress.

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Commissioner Prada inquired if SFBP will update their guidelines based on the lessons learned from the HYUNDAI NEPTUNE incident. Port Agent Carlier explained they have adjusted their guidelines regarding arrival timeline, length index, and speed.

Commissioner Carr stated Captain Aune’s presentation of lessons learned was very detailed and included a productive roundtable discussion. Carr explained the meeting was held through Zoom. Commissioner Tynan appreciated the feedback regarding the usefulness of the lessons learned presentation, as it helps the Board evaluate the processes imposed.

Captain McIntyre inquired if Captain Aune has met all his obligations to the Board. Board Counsel Eagan noted the lessons learned report was timely made and conveyed in the Board meeting.

Commissioner Nyborg inquired about the options available for rating the level of error made by a pilot when an incident occurs. He explained it may be a good idea for the Board or a Committee to determine if pilot error or minor pilot error designations could be used when rating the level of error. Executive Director Garfinkle explained the options are either misconduct or no misconduct. The only time the term “pilot error” is mentioned is in section 210(b)(3) of the Board’s regulations, providing for cessation of an investigation when there is “clearly no pilot error.” In these cases, the Incident Review Committee reports to the Board its decision to discontinue the investigation. He stated there is no provision for a determination of “minor” pilot error.

7. Port Agent’s Report (Port Agent Carlier)

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

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

- Captain Kasper – June 11, 2020
- Captain Lowe – January 27, 2022
- Captain Rocci – March 28, 2022
- Captain Greger – March 3, 2022

Port Agent Carlier 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.

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He reported that there are currently 50 licensed pilots. In April, there were 8 MRP exceptions, with the shortest rest period being 10.1 hours.

B) Monthly report on SFBP ship piloting business activity.

For the month of April, Port Agent Carlier reported normal operations for P/V CALIFORNIA, P/V DRAKE, P/V GOLDEN GATE, and P/V SAN FRANCISCO. P/V PITTSBURG was laid up on March 9, 2022.

Port Agent Carlier also reported that vessel moves for April 2022 were as follows:

- Bar Crossings: 413 moves
- Bay Moves: 116 moves
- River Moves: 58 moves
- Total Moves: 587 moves
- Gross Registered Tons (GRT): 22.7 million

He also reported that when comparing 2022 year-to-date vessel move data with the same period in 2021, total moves were down 3.7% and GRT was down 9%.

Commissioner Nyborg noted that the numbers of moves do not reflect well since 2020 and 2021 were COVID years.

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.

8. Pilot Evaluation Committee (Captain Robinson)

A) Report on the Pilot Evaluation Committee (PEC) meeting held on May 25, 2022.

Port Agent Carlier reported that the Pilot Evaluation Committee members are preparing for the upcoming Pilot Trainee Training Program Selection Examination and that he will present the report.

Port Agent Carlier reported on the following:

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- The PEC met on May 25, 2022, and in attendance were Committee members Captains Aune, Ruff, Slack, Wehr, and Robinson.
- The PEC provided Executive Director Garfinkle a report of trainee activity over the past month.
- PEC continued to work at the California State University Maritime Academy developing the next simulator exam scheduled for June 2022, and the simulation portion of the Pilot Trainee Training Program Selection Examination is complete and is ready for testing.
- There are currently eight trainees: Captains Adams, Barnum, Burns, Meyer, Olmsted, Pascucci, Sappington, and Snapp. The trainees' range of time in the program is from 1 month to 31 months.
- Captains Adams, Olmsted, Barnum, and Snapp received their First-Class pilotage endorsements for unlimited tonnage on San Francisco Bay by the U.S. Coast Guard. Captain Adams, Olmsted, Barnum, and Snapp are handling in all areas.
- Captain Adams is on probation and continues to work on consistency in his piloting.
- Captains Burns, Meyer, Pascucci, and Sappington are acquiring route trips and are handling or part handling in all areas.
- Trainees were interviewed and counseled individually in closed session by the PEC members on their progress in the Pilot Trainee Training Program. Executive Director Garfinkle also attended the closed session when PEC members met with Captain Adams.
- Most trainees are presently meeting the recommended benchmarks in the program and are progressing at their own rate.
- The next PEC meeting is scheduled for June 15, 2022, 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 or off 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.

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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.

**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 reported 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.)**

A) 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 June 23, 2022.

Executive Director Garfinkle explained the 90-day statutory deadline occurred in July 2021. He stated the incident report is not completed yet and the delay is due to the extensive work required to prepare for the upcoming exam. The IRC requests an extension to June 23, 2022. There is no danger to public safety due to the delay in presenting the report.

MOTION: Commissioner Prada moved that the Board grant an extension to the Incident Review Committee to present its report on the M/V GLOBE PEGASUS at the Board meeting to be held on June 23, 2022.

Commissioner Nyborg seconded the motion.

VOTE: YES: Schmid, Nyborg, Carr, Prada, and Tynan.

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.

Executive Director Garfinkle reported a loss of propulsion from the April 2022 Significant Port Safety and Security Cases. He explained when low sulfur fuel was first instituted, losses of propulsion occurred frequently; however, the number of incidences has subsided. The loss of propulsion reported for April was not relevant as it occurred offshore and was not in the Board’s jurisdiction.

12. Finance Committee meeting (Committee Chair Captain Nyborg)

A) Report on the Finance Committee meeting held on May 10, 2022.

Committee Chair Captain Nyborg reported that the Finance Committee met on May 10, 2022, and reviewed the Board’s financial statements for March 2022, the financial information on surcharges set by the Board, the San Francisco Bar Pilots and San Francisco Bar Pilots Benevolent and Protective Association Consolidating Financial Statements for the calendar year 2021, the State Controller’s Office pilotage and surcharge audit report for calendar year 2020. The March 7, 2022 minutes were approved.

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

- 1) To adjust or not adjust the Board Operations Surcharge rate (currently at 5.5% of all pilotage fees), and the revenues, expenditures, and reserve balance. Possible Board action to adjust the Board Operations Surcharge rate.**

During the May 10, 2022 Finance Committee meeting, the Committee reviewed the Board Operations Surcharge data and noted the projected ending fund balance of \$1,294,230 is significantly less than the total budget authority of \$1,688,000. To close the gap between the fund balance and budget authority amounts, the Committee recommended to increase the Board Operations Surcharge rate.

MOTION: Commissioner Captain Nyborg moved that the Board approve the Finance Committee’s recommendation to increase the Board Operations Surcharge rate from 5.5% to 6.0%, effective July 1, 2022.

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VOTE: Commissioner Carr seconded the motion.
YES: Schmid, Nyborg, Carr, Prada, and Tynan.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

2) To adjust or not adjust the Pilot Continuing Education Surcharge rate (currently at \$50 per move). Possible Board action to adjust the Pilot Continuing Education Surcharge rate.

During the May 10, 2022 Finance Committee meeting, the Committee reviewed the Pilot Continuing Education Surcharge data and noted the actual and projected revenues of \$328,000 are insufficient to cover the actual and projected expenses of \$524,000, and recommended increasing the Pilot Continuing Education Surcharge rate.

MOTION: Commissioner Captain Nyborg moved that the Board approve the Finance Committee’s recommendation to increase the Pilot Continuing Education Surcharge rate from \$50 to \$60 per move, effective July 1, 2022.
Commissioner Schmid seconded the motion.

VOTE: YES: Schmid, Nyborg, Carr, Prada, and Tynan.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

3) To adjust or not adjust the Pilot Trainee Training Surcharge rate (currently \$20/trainee/move). Possible Board action to adjust the Pilot Trainee Training Surcharge rate.

During the May 10, 2022 Finance Committee meeting, the Committee reviewed the Trainee Training Surcharge data and noted the ending fund balance is on target. The committee recommended maintaining the current Trainee Training Surcharge rate of \$20 per move, which was previously approved and became effective on January 1, 2022.

MOTION: Commissioner Captain Nyborg moved that the Board approve the Finance Committee’s recommendation to maintain the Trainee Training Surcharge rate of \$20 per move.
Commissioner Tynan seconded the motion.

VOTE: YES: Schmid, Nyborg, Carr, Prada, and Tynan.
NO: None.

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ABSTAIN: None.

ACTION: The motion was approved.

4) To adjust or not adjust the Pilot Dispatch Program Surcharge rate (currently \$75/move). Possible Board action to adjust the Pilot Dispatch Program Surcharge rate.

During the May 10, 2022, Finance Committee meeting, the Committee reviewed the Pilot Dispatch Program Surcharge data and noted SFBP projects they will have collected the total authorized amount of \$275,000 by July 2022, and recommended maintaining the current Pilot Dispatch Program Surcharge rate of \$75 per move, which was previously approved and became effective on April 1, 2022.

MOTION: Commissioner Captain Nyborg moved that the Board approve the Finance Committee’s recommendation to maintain the Pilot Dispatch Program Surcharge rate of \$75 per move.

Commissioner Prada seconded the motion.

VOTE: YES: Schmid, Nyborg, Carr, Prada, and Tynan.

NO: None.

ABSTAIN: None.

ACTION: The motion was approved.

5) To adjust or not adjust the Pilot Boat Maintenance Surcharge rate (currently \$200/move). Possible Board action to adjust the Pilot Boat Maintenance Surcharge rate.

During the May 10, 2022 Finance Committee meeting, the Committee reviewed the Pilot Boat Maintenance Surcharge data and noted SFBP projects they will have collected the total authorized amount of \$1,400,000 by January 2023, and recommended maintaining the current Pilot Boat Maintenance Surcharge rate of \$200 per move, which was previously approved and became effective on April 1, 2022.

MOTION: Commissioner Captain Nyborg moved that the Board approve the Finance Committee’s recommendation to maintain the Pilot Boat Maintenance Surcharge rate of \$200 per move.

Commissioner Tynan seconded the motion.

VOTE: YES: Schmid, Nyborg, Carr, Prada, and Tynan.

NO: None.

ABSTAIN: None.

ACTION: The motion was approved.

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Commissioner Captain Nyborg reported the Finance Committee reviewed the State Controller’s Office Independent Accountant’s Report on Applying Agreed-Upon Procedures for calendar year 2020. He stated there was one finding where SFBP over-billed the trainee training surcharge to vessel companies in the amount of \$3,690. The error occurred due to an inaccurate count of the number of trainees in the program in July and August.

Vice President Schmid inquired how the overbilling is resolved. The Executive Director explained there is no adjustment, it is only noted there was an overcharge. He also reported, additional steps have been taken to improve communication between BOPC and SFBP regarding the number of trainees in the program.

Captain McIntyre stated that when collecting over \$31 million, an overcharge of \$3,690 is minimal.

Commissioner Captain Nyborg reported the Finance Committee reviewed and discussed the San Francisco Bar Pilots and San Francisco Bar Pilots Benevolent and Protective Association Consolidating Financial Statements for the calendar year 2021.

13. Discussion of conflicts of interest issues regarding the Assistant Director (Executive Director Garfinkle and Board Counsel Egan). Board action to decide whether to waive the attorney-client privilege on Board Counsel Egan’s memos to the Board dated March 21, 2022 and April 14, 2022.

Board Counsel Egan reported since the last Board meeting, Executive Director Garfinkle provided a directive to his subordinate, the Assistant Director, in the form of a written letter. The letter outlines the applicable law relevant to conflict-of-interest situations, describes the areas conflict could arise, and prescribes a protocol for responding to actual or potential conflicts. Board Counsel, the Executive Director, and the Assistant Director are all charged with identifying and resolving conflicts as they rise.

In addition to the conflict-of-interest issues, the letter covers privacy, security, and disclosure. The letter cites Harbors and Navigation Code section 1157.1, which protects as confidential the personal information of pilots, trainees, and trainee applicants. Such information may only be shared in the ordinary course of Board business with those having a need to know. This means the Assistant Director cannot disclose personal information to anyone, including her husband, and if there was a breach it would result in disciplinary action.

Board Counsel Egan reported at the last Board meeting there was a discussion to make his memos to the Board, dated March 21, 2022, and April 14, 2022, public, and there is a possible action item for today’s meeting. However, he stated, the Executive Director’s recent directive to the Assistant Director summarizes, for the Assistant Director’s guidance, the

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conclusions in the two memos.

Board Counsel Eagan explained the attorney-client privilege is for the benefit of the client and in the case of the two memos he provided the Board, the Board is the client. Board Counsel Eagan stated it is his personal view that making the memos public could be a good thing and shed light on any issues with the Assistant Director being employed at the Board. He told the Board if they are of the disposition to release the memos, he, as their attorney, would have no issues with that.

Executive Director Garfinkle stated he had nothing more to add.

Commissioner Tynan expressed her concerns with President Hayes-White not being able to participate in the discussion and recommended the issue be moved to the next Board meeting in June 2022, when all Board members are present.

Commissioner Prada stated since this issue impacts the Assistant Director directly and she is in attendance, he would like to hear how she feels about moving the agenda item to the June 2022 Board meeting.

Assistant Director Barton expressed that delaying the discussion to resolve the Board's concerns is creating stress and anxiety for her. She explained that in her first and second interview, she disclosed her relationship with her husband and when offered the job, she assumed the BOPC had no concerns. It was after two months into the job she discovered not all the Board members were aware of her relationship. She stated she wanted to be transparent from the beginning as she did not want to hinder her husband's opportunities for becoming a pilot. She explained she relied on the job offer to make financial-based decisions to resign from her high-level position at the Franchise Tax Board (FTB) and lease an apartment in Alameda to commit herself to the Assistant Director position.

Assistant Director Barton explained that when she applied for the position she and her husband were very optimistic that he would be admitted into the training program. As the training program requires much of the trainees' time for one to two years, she felt the job would be ideal so she and her husband could relocate from the Sacramento area to the Bay Area together, lessening the burden of being apart during the training period.

Assistant Director Barton provided her background as an Administrator IV at the FTB, explaining that she was required to take privacy, security, and disclosure training annually. She stated the training has made her aware of the consequences related to disclosing information, which includes fines and penalties, loss of job, and loss of retirement. She stated she never accessed taxpayer information that she didn't have a business need to know. She explained FTB is responsible for keeping taxpayer's information safe and secure, so the public has confidence in the integrity of the income tax administration process. She stated in

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her former position at FTB she provided reports directly to the Chief Financial Officer and Chief Executive Officer, and if there were any concerns about her integrity, she would never have been given that role or responsibility.

Commissioner Carr stated this is an ethical issue and the fault lies in the process itself. He stated he recently completed the ethics training which speaks to officials acting properly. He stated the Board needs to be very careful on how they view potential conflicts. He stated it is disappointing that this wasn't high on the Board's radar. He stated the Board should discuss the attorney-client privilege memos in a closed session.

Board Counsel Eagan advised against discussing in a closed session, as it is not permitted for this issue. He stated the Board members have an option to send him their questions and he can respond.

Board member Dougherty stated from Agency's perspective, they hear the Board's concerns and the latest directive provides legal analysis of conflict-of-interest issues and how to manage the conflict-of-interest issues going forward. She inquired what the Board's interest is for moving this issue to next month. Vice President Schmid stated they want all Board members in attendance to have the conversation.

Commissioner Tynan stated it appears the Executive Director had Board Counsel's assistance with writing the directive to the Assistant Director and she is concerned the letter was a way to get around the memos that were issued with attorney-client privilege. She inquired if another memo would be issued between now and the next meeting to try to put the issue to bed. Commissioner Carr stated no further documents on the issue should come out until the next meeting when the agenda item can be discussed with all Board members present.

Board Counsel Eagan explained the Executive Director needs to advise the Assistant Director on the rules of the road. It is prudent action to take. The letter explains to the Assistant Director what the Executive Director is demanding. The Executive Director is drawing on advice from Board Counsel, but the purpose of the directive is not to get around the attorney-client privilege memos. The purpose is for the Executive Director to lay out what is required of the Assistant Director.

Commissioner Tynan stated this is a personnel issue and the Board should discuss it in a closed session. Board Counsel Eagan stated this does not qualify for a closed session discussion. If the issue is related to the Assistant Director's performance, then that would need to go to a closed session, but no one is questioning her performance. Additionally, the Board does not appoint or terminate the Assistant Director; that authority lies with CalSTA.

The Executive Director stated his purpose with the letter was to provide the Assistant

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Director with guardrails ,and he didn't see any reason not to inform the public of those guardrails as well.

Vice President Schmid stated the agenda item would move to next month.

Ms. Cristia-Plant, the former Assistant Director explained that filling the Assistant Director position is difficult due to the small size of the BOPC, office location, and finding the appropriate amount of expertise within state government. She noted that the position was vacant three years prior to her filling it ,and was vacant for almost a year before the recent hire of Jennifer Barton. She stated that in her opinion, Assistant Director Barton is qualified for the position.

Mr. Jacob stated dealing with conflict-of-interest issues is more challenging for smaller agencies like the BOPC. He thanked Board Counsel and Board staff for addressing these issues. He stated PMSA shares the same concerns as stated in SFBP's letter. He is concerned there may be long-term impacts to the industry if there is an appearance of bias in rate setting. He stated this issue should be taken seriously, and if the discussion proceeds further past next month, PMSA will be happy to submit a Public Records Act request to put the discussion in focus.

Vice President Schmid called a ten-minute break at 11:00 am.

Vice President Schmid reconvened the meeting at 11:15am.

14. Report on the progress of the Ad Hoc Committee to Review the Pilotage Rate Setting Process initiative (Commissioner Carr)

Executive Director Garfinkle reported that he had emailed the office of Assembly Member Grayson regarding the Ad Hoc Committee to Review the Pilotage Rate-Setting Process initiative, but he has not received a response.

Ms. Dougherty thanked the Board for the discussions and reported that CalSTA had received the Committee's Report and a briefing from the Executive Director earlier this month. At this point, CalSTA does not have a position regarding the recommendations, but has been continuing informal conversations with SFBP and industry to discuss the report, including some potential questions with the proposed CalSTA Secretary's role. CalSTA is open to additional discussions, and in meeting with a Committee member. She added that CalSTA appreciates that all parties are continuing to work together to reach a compromise.

Committee Chair Captain Carr reported that Commissioners Tynan and Prada were also interested in meeting with the CalSTA Secretary, and added that the inclusion of the CalSTA Secretary in the rate-setting process was a compromise so that all parties have their concerns

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addressed, and the Legislature is relieved of the task. Executive Director Garfinkle confirmed for Committee Chair Captain Carr that the recommendation was also provided to the Governor for review, and he will check with the Governor’s staff on any updates.

Board Counsel Eagan noted that two Committee members won’t be able to meet with others at the same time to discuss the issues due to the Bagley-Keene Open Meeting Act.

Commissioner Nyborg reported that the pilots are getting frustrated and do not know what the holdup is. He wants to find a solution to move the recommendation forward and make progress.

Committee Chair Captain Carr requests to have an in-person meeting with CalSTA, so that Agency is involved with the rate-setting process discussion, and that there was no need to have another Committee meeting.

Executive Director Garfinkle noted that Sacramento wants the rate payers and pilots to reach an agreement, otherwise there is resistance.

Mr. Jacob agreed with Executive Director Garfinkle and thanked Ms. Dougherty for reaching out. He reported that additional discussions between the pilots and industry happened earlier in the week, with discussions taking place throughout the summer, and that the discussions have been productive. He wants to have a product by the end of the legislative function. He noted that a conversation with CalSTA is needed on how comfortable the Agency will be, in order for the process to be successful.

Committee Chair Captain Carr thanked Ms. Dougherty for the updates.

15. Report on shipping activity regionally and within the Board’s jurisdiction (Captain McIntyre)

SFBP Business Director Captain McIntyre reported that the shipping activity in the Bay Area is still down and is getting worse, even when comparing to an already bad year. She reported that the quarterly revenue is \$8.3 million and is now down by 9% compared to 2021. She explained the situation is not sustainable and is especially difficult for the newer pilots. She explained Pilot distributions need to increase, either by increase in traffic or increase in rates.

She stated the vessel traffic coming into Oakland is slow and the International Longshore and Warehouse Union (ILWU) contract negotiations are proceeding but they have taken a break, and there will likely be no real engagement until after the contract expires on July 1, 2022.

SFBP continues to work with rate payers to put together an emergency funding package.

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Mr. Jacob reported the following regarding the Howard Terminal Ballpark in Oakland:

- The San Francisco Bay Conservation and Development Commission (BCDC) will take public comments and will vote on June 30, 2022, regarding the Oakland Athletics’ proposed amendment to the Seaport Plan to eliminate the Port Priority Use Area designation on Howard Terminal at the Port of Oakland.
- The Howard Terminal is creating a huge distraction and Oakland is having a hard time securing contracts. The Oakland inner harbors are one-year contracts and 70% of the traffic goes into Oakland Inner Harbor.
- The decrease of congestion in vessel queues is taking place in other parts of the U.S., but the ships are not coming to the Bay Area.
- According to the PMSA *West Coast Trade Report*, the market share numbers for Los Angeles and Long Beach are down, including volume in other parts of the U.S.
- Southern California is down to 25 ships with 0 ships in anchorage and 0 ships alongside.
- The reduction of the queue in Southern California means adjustment to Oakland.
- In Oakland, exporting was the core business, and with U.S. exports getting more expensive, the demand will go down. It is not ideal for the Port of Oakland to import more than it exports.
- There is a rail-capacity shortage.
- The Port of Oakland’s pop-up yard at the Howard Terminal is experiencing congestion because there is more demand for space.

16. Incident Review Committee report on the interaction between the M/V CHARLIE and the moored M/V EVA SHANGHAI in the Port of Stockton on October 17, 2021. (Executive Director Garfinkle/Vice President Schmid)

A presentation of the Incident Review Committee report on the interaction between the M/V CHARLIE and the moored M/V EVA SHANGHAI in the Port of Stockton on October 17, 2021. Board deliberation of the Incident Review Committee’s recommendations to the Board and determination regarding the event involving the M/V CHARLIE and the moored M/V EVA SHANGHAI. 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).

Vice President Schmid recused herself from the Board and assumed her position on the Incident Review Committee (IRC). Commissioner Tynan chaired the meeting during this agenda item discussion.

Executive Director Garfinkle presented the IRC report for the M/V CHARLIE and the moored M/V EVA SHANGHAI. He summarized the facts of the incident as follows:

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- On the evening of October 17, 2021, the M/V EVA SHANGHAI (EVA) was secured port-side-to at the Port of Stockton, Berth 10/11.
- That same afternoon, Captain Sam D’Aloisio piloted the inbound M/V CHARLIE (CHARLIE) to the Port of Stockton, Berth 5.
- Captain D’Aloisio notified the Port of Stockton Port Police Office via telephone of the CHARLIE’s schedule. It is the usual practice for the Port Police to provide this information to all vessels along the route so that they are able to raise their gangways and adjust their lines as necessary.
- At 1730 hours, the CHARLIE passed the EVA SHANGHAI, at a speed of approximately 2.5 knots.
- During the passing, the EVA SHANGHAI was pulled 10 feet off the dock, then away from the dock, damaging the dock’s bull rail and the ship’s gangway.

Executive Director Garfinkle then discussed the public portions of the IRC report, the evidence gathered by the IRC, and the IRC’s analysis of the incident, including whether the pilot was proceeding in a reasonable and cautious manner using the skill and that the average pilot similarly situated would have exercised, and whether the pilot’s actions were reasonable and prudent and made using his best judgment. He presented the timeline, images, and an estimate of damages.

Executive Director Garfinkle stated that based on the evidence and analysis, the IRC recommended the following actions to the Board:

- That the Board find for no misconduct on the part of the pilot.
- That the case be closed with no further action.

Commissioner Prada thanked Board staff for sending the IRC report through email and Executive Director Garfinkle for providing the details in the report.

MOTION: Commissioner Prada moved to accept the Incident Review Committee’s recommendation to the Board on the M/V CHARLIE incident, that the Board find for no misconduct on the part of the pilot, and that the case be closed with no further action.

Commissioner Nyborg seconded the motion.

VOTE: YES: Nyborg, Carr, Prada, and Tynan.

NO: None.

ABSTAIN: None.

ACTION: The motion was approved.

Commissioner Tynan turned the meeting back to Vice President Schmid to resume as Chair.

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

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Captain James Barton introduced himself to the Board and made the following statement.

Captain Barton explained he is the next candidate on the 2019 eligibility list and he respectfully requests the Board to reconsider accepting him into the Trainee Training Program before the current eligibility list expires on June 27, 2022. Captain Barton said becoming a pilot has been a career goal that he has been striving towards for many years. He explained that to become a candidate on the eligibility list, he first had to have the necessary experience to qualify for the exam and then had to successfully pass both the written and simulator exams. Since passing the exam in 2019, he has been preparing for the Trainee Training Program by steadily completing nine pilotage routes and he has received approval to test for two more.

Captain Barton stated during the last Pilot Power meeting, the Committee expressed their concerns regarding the burden placed on the pilot evaluators when there are more than eight trainees at a time. He said the Committee's decision to not go above eight was based on shipping activity and the reduced opportunities for trainees to get their rides in. Captain Barton stated he wasn't disagreeing with these concerns; rather, he was asking the Board to consider his specific situation based on the following factors.

- Based on the three-year training program term limit there will be an opening in the program by the end of September 2022. If he was brought into the program the last week in June, prior to the list expiring, there would be a maximum of three months of having nine trainees in the program. As he Board recently approved nine trainees in November 2021, he requested the Board to consider making a similar exception.
- Based on his understanding, trainees typically observe their first few months in the program. Therefore, during the first few months when there would be nine trainees, he would not be affecting the existing trainees, nor would he place an additional burden on the evaluators.
- Shipping activity is increasing and is currently higher than it was in November 2021, when the program had nine trainees.

Captain Barton stated if he is given the opportunity to join the Pilot Trainee Training Program he would be fully dedicated to completing the program and becoming a competent, responsible, and accountable pilot. He thanked the Board for their consideration.

Vice President Schmid thanked Captain Barton for his statement and stated this would need to be placed on the agenda, and inquired if the Board wished to add it to the next meeting's agenda.

Commissioner Tynan thanked Captain Barton for his comments and was pleased with his thorough explanation and appreciated his point of view.

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Commissioner Nyborg highlighted the next Board meeting is scheduled for June 23, 2022, and the list expires on June 27, 2022.

Commissioner Carr stated the Pilot Power Committee has repeatedly looked at the training corps and suggested and the Committee agreed to have eight trainees. He stated the request he made for the Committee to evaluate was to approve the capability of accommodating nine trainees. He also referenced Ms. Cristia-Plant, the previous Assistant Director, suggested asking for budgetary authority for ten trainee. Doing so would give flexibility to bring in the next trainee on the eligibility list when a trainee in the program would be graduating within a month's time.

Commissioner Prada clarified the applicant had applied for the next exam and has been accepted to sit for the exam. Captain Barton explained although he is scheduled to sit for the exam, there are a number of events that could take place that could prevent him from being able to pass all three parts of the exam. Captain Barton explained it didn't make sense to him that he would have to sit for the exam at the same time he is already qualified and on the eligibility list.

Vice President Schmid explained that even if his request was placed on the next meeting's agenda, he would still have to go through the exam process.

Roma Cristia-Plant, prior Assistant Director, clarified the purpose of the budget change proposal (BCP), which she helped develop with the Pilot Evaluation Committee. She stated the BCP was a request for additional authority to fund ten full-time trainees for a full fiscal year, not an interim period. She explained the request was made to and approved by the Department of Finance (DOF). She stated the purpose was to go to ten trainees and the Pilot Evaluation Committee determined they could handle ten. In fact at one time there have been up to 14 trainees in the program. Ms. Cristia-Plant explained, if the purpose was to have eight trainees, the Board staff would not have requested an additional \$200,000 from DOF.

Commissioner Carr stated he was disappointed to hear Ms. Cristia-Plant's clarification, as he was the one who requested the budget increase and contends the purpose was to go up to nine for a short period of time.

Commissioner Carr explained in the last Pilot Power Committee meeting, the Committee decided to increase the number of trainees in the program from seven to eight and the Board accepted the recommendation until another Retirement Survey could be obtained, as the last survey conducted did not provide good reliable data.

Mr. Jacob objected to the conversation continuing.

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Commissioner Prada stated there is a silver lining in that Captain Barton will have an advantage taking the next exam as he has been through the process before.

Captain McIntyre stated she was uncomfortable with this discussion given the conflict of interest agenda item being unsettled.

After receiving comments from the Board and public, Vice President Schmid announced the issue would not proceed to the next month's Board meeting and thanked Captain Barton for his commentary.

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

The Board discussed the possibility of having remote meetings if the Board members are unable to travel to the Board office in San Francisco. Executive Director Garfinkle clarified that Board members can join the Board meetings remotely, but their location must be accessible to the public, and the location of the address must be published on the Board agenda. Board Counsel Eagan further clarified that notification of the location must still meet the 10-day notice period, and does not suggest Commissioners meet at high-traffic public locations, such as a coffee shop, which can be difficult for a closed session.

Executive Director Garfinkle noted that some state departments have hybrid meetings but he is not sure how their process works, and Board staff will investigate the options.

Ms. Cristia-Plant noted that in the past, when the Board had a closed session, the remote Board member called in on a second conference line.

19. Adjournment.

Vice President Schmid adjourned the meeting at 12:19 p.m.

Submitted by:



Allen Garfinkle
Executive Director