

<p>Meeting Date:</p> <p>May 25, 2023</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 16</p>
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Board Members Present

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

Board Members Absent

Vacant, Wet Cargo Industry Member
 Vacant, Dry Cargo Industry Member

Board Staff Present (in person and by phone)

Allen Garfinkle, Executive Director
 Roma Cristia-Plant, Acting Assistant Director (by phone)
 Dennis Eagan, Board Counsel
 Alethea Wong, Licensing and Training Programs Manager
 Charles Louie, Administrative Assistant II

Identified Public Present (in person and by phone)

Captain John Carlier, San Francisco Bar Pilots (SFBP) President and Port Agent; Captain Anne McIntyre, SFBP Business Director (by phone); Mike Jacob, Pacific Merchant Shipping Association (PMSA) Vice President and General Counsel; Captain Eric Robinson, SFBP; Kevin Baldwin, Bullivant Houser Bailey PC; Evette Davis, SFBP; Captain Charles Davis, 2022 Pilot Trainee Training Examination Candidate (by phone).

OPEN MEETING AGENDA

OPEN MEETING

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

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

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

Captain Davis, attending by telephone, stated he was contacted by an SFBP investigator, and requested that his personal contact information not be disclosed to any third party.

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Mr. Baldwin, attorney for SFBP, commented in response that SFBP has not released any confidential information pertaining to Captain Davis. Mr. Baldwin also objected to how Item 18 and Item 19 were agendized, citing a lack of input from commissioners, and that the Board should have sufficient time to consider the legal issues. He requested that the board take no action on agenda items 18 and 19. He also noted that on May 1, 2023, he made a public records act request relevant to agenda Items 18 and Item 19, which at the time of the meeting had not been fulfilled.

3. Review and approval of Board meeting minutes (President Tynan)
Board action to approve the minutes from the Board meeting held on April 27, 2023.

Commissioner Nyborg recommended to defer approving the draft minutes of the meeting held on April 27, 2023, to the next board meeting. Vice-President Schmid agreed. President Tynan announced board action on Item 3 will be put off until the next board meeting.

4. President Announcements and Activities (President Tynan)

President Tynan recognized CHP Officer Mark Andrews and thanked him for being present at this meeting.

5. Board Member Announcements and Activities (Board Members)

Commissioner Carr commented that there was no opportunity for Board involvement in crafting agenda item 18. He added that, in his opinion, a discussion on this issue is not timely and inappropriate, as there was insufficient time for a thorough review. He suggested that instead of addressing the issues raised by agenda items 18 and 19, the time would be better utilized in drafting a proper agenda item.

Commissioner Nyborg asked if he could defer his comments until agenda Item 18. President Tynan responded affirmatively.

6. Directors' Report (Executive Director Garfinkle)

A) Correspondence and activities since the Board meeting held on April 27, 2023.

- On April 28, 2023, Board staff received a copy of a letter to President Tynan from SFBP Counsel Kevin Baldwin, responding to Captain Barton's public comment that his contact information was shared. The letter from Mr. Baldwin reiterated his claim that SFBP received a copy of this letter from a member of a maritime industry news publication and that Captain Barton's contact information was obtained through a simple web search and not from any member of the BOPC.

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- On May 1, 2023, Board staff received a copy of a public records act request addressed to Board President Tynan, from Kevin Baldwin, an attorney representing the San Francisco Bar Pilots.
- On May 3, 2023, he received a copy of an editorial by John McLaurin titled “An Inflection Point,” in which he cites three key reasons California ports are losing market share of shipping business.
- On May 4, 2023, he received a notice that the Board web site must be in compliance with the state website accessibility rules, and that all documents posted must comply with the American ADA. It was noted that the Board web site currently has over 2,000 documents that were in need of remediation to achieve compliance prior to July 2023.
- On May 5, 2023, he received an email from Captain Greger, inquiring whether he can perform piloting duties independent of the SFBP. On May 8, 2023, he responded to that inquiry by noting the requirements that one would have to use a pilot boat approved by the Board that is maintained exclusively for pilotage, and that there is a requirement that a pilot shall pilot only the vessels assigned to him by the Port Agent (elected by a majority of licensees).
- On May 8, 2023, he responded to a public records act request from Captain Barton, extending time to respond to his request to May 21, 2023.
- On May 9, 2023, he attended a virtual meeting of the Joint meeting of the Finance Committee/Pilot Boat Advisory Committee.
- Also, on May 9, 2023, in response to action taken at the Joint Pilot Boat Advisory/Finance Committee meeting concerning surveying a newly delivered pilot boat, he received information about a surveyor chosen to survey the newest Boat. There will be an agenda item on the June Board meeting agenda for the Board to review the policy of having a new boat surveyed prior to delivery and to possibly approve the surveyor for this delivery.
- Also, on May 9, 2023, he received letter from Captain Ron Greger claiming to rebut a document provided to the board by Kevin Baldwin in April, directly in response to agenda item 18.
- On May 11, 2023, he responded to a Public Records Act request from Kevin Baldwin, an attorney representing SFBP, extending the time to make a determination to respond to May 25, 2023.
- Also, on May 11, 2023, he received two Public Records Act requests, one from Captain Greger and one from Captain Kasper.
- Also, on May 11, 2023, he attended the Port of Oakland/Marine Exchange May Day celebration held in Oakland.
- On May 12, 2023, Board staff received a request to hold a public hearing on the proposed Fatigue regulations.
- On May 13, 2023, he received an email from Captain Gallo, one of the candidates on the 2022 Pilot Trainee Training Selection Exam list expressing concern over the delay

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in the Board acceptance of the list.

- On May 14, 2023, he received a second public records act request from Captain Barton.
- On May 15, 2023, he received an email from the Port Agent informing him that the SFBP Policy Committee and SFBP B & P Board of Directors met and unanimously agreed to initiate the process to disassociate Captain Greger.
- On May 23, 2023, he attended an Emergency Response table-top exercise conducted by CalSTA.
- Also on May 23, 2023, he attended a meeting of the Finance Committee of the Board.
- On May 24, 2023, he received the PMSA West Coast Trade Report for May 2023.
- Also on May 24, 2023, Board staff received a letter from PMSA Vice President Mike Jacob regarding the lack of public disclosure of materials ahead of today's meeting.

B) Report on pilot licensing matters since the Board meeting held on April 27, 2023.

Since the April Board meeting, the board has issued license renewals to Captains Murray, Weiss, and Deisher.

C) Report on Board surcharges.

Board surcharges collected for the Month of April 2023 were \$754,455.85, comprising the following surcharge amounts:

- | | |
|----------------------------|--------------|
| • Operations Surcharge | \$181,455.87 |
| • Pilot Training Surcharge | \$35,338.25 |
| • Trainee Surcharge | \$59,177.09 |
| • Pilot Boat Surcharge | \$478,484.64 |

D) Report of Pension Fiduciary.

As of May 1, 2023, we had 86 pensioners.

Surcharge Rate for the Quarter	\$0.05870/gross registered ton
Rolling Look Back Period	January 2022 through December 2022
Monthly Tonnage	26,784,493
Surcharge Billing Total	\$1,572,249.74
Administrative Costs for the Month	\$2,198.60
Amount Distributed to Pension Beneficiaries	\$1,570,051.37
Total Monthly Target Rates	\$1,228,232.84
Amount Over/(Under) Target	\$344,017.13

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The last COLA increase to the pension was April 1, 2023.

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

Nothing to report.

F) Report on legislative activities and contractual matters.

Nothing to report on legislative activities.

Contractual Matters

Caltrans—General IT Support

Contract Expiration: January 31, 2023; new contract to expire on January 31, 2026

California Highway Patrol contract staff sent the new contract documents to Caltrans for approval and signature on April 7, 2023. No response yet from Caltrans on request for an update sent on May 4, 2023.

San Jose State University Research Foundation—Pilot Fatigue Study

Contract Expiration: June 30, 2023

The contract amendment is in final review at CHP, and then will be submitted to the Department of General Services for final review and approval. The amendment will extend the term of the contract to June 30, 2026, add a new researcher, change budget line-item amounts for Phase 4 of the study, but not the total contract amount, and make minor changes to contract contacts. The amendment will allow the researchers to conduct a post-fatigue prevention regulation evaluation.

SFBP—Trainee and Pilot Continuing Education Program Support, and Surcharge Audit Support

Contract Expiration: June 30, 2023; New contract to expire on June 3, 2028

Contract documents for a new five-year non-competitively bid contract with the San Francisco Bar Pilots was submitted to the California Highway Patrol staff on April 20, 2023. BOPC staff requested and received approval from CHP management to expedite this contract amendment, which will not, however, impact the Department of General Services processing timeline. The Board approved the proposed new contract at its meeting in April 2023. Unfortunately, the new contract will not be fully executed by July 1, 2023, due to the processing timeline for non-competitive bid contracts. Board staff are pursuing the possibility of an emergency contract with CHP contracting staff.

California State University Maritime Academy – Trainee Selection Exam Services

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Contract Expiration: TBD

As reported previously, Board staff have put on hold a new contract with Cal Maritime for Trainee Selection Exam services, since the university has not identified staffing for the next simulator exam test component. Cal Maritime also provides a test site for the Trainee Selection Exam written component.

State Controller’s Office – Pilot Boat Program Audit

Contract Expiration: TBD

As reported previously, Board staff will need to enter into a new contract for a program audit of the Pilot Boat Program as required by statute. The State Controller’s Office has yet to assign a project manager for this audit.

In anticipation of the approval of the budget change proposal for an IT Modernization Project and Board approval, Board staff have worked on the following new contracts:

Caltrans – IT Modernization Project Support

Contract Expiration Date: June 30, 2025

Contract documents were submitted to the California Highway Patrol on March 28, 2023, for Caltrans staffing support of the Board’s IT Modernization Project. The California Highway Patrol completed their intake of the contract request on April 17, 2023, and are working on the new contract.

Request for Offer – IT Modernization Project Manager

Contract Expiration Date: TBD

Board staff submitted documents to California Highway Patrol staff on May 17, 2023, to obtain requests for offer for an overall Project Manager for the IT Modernization Project from current State certified IT contractors. The selected contractor will be responsible for the overall management of the IT Modernization Project.

CHP is experiencing significant turnover in their contracts staff, and have assigned and reassigned BOPC contracts to new staff these past several months. As such, there will be delays and extra work on the BOPC’s side to get CHP staff familiar with BOPC contracts and contracting issues, which will likely lead to delays in overall contract processing.

In response to Vice President Schmid’s inquiry concerning staff workload, Executive Director Garfinkle responded that the remediation process required by state law has been very time consuming. He also announced that Matthew Millspaugh has been appointed to the vacant Assistant Director position. CalSTA has graciously offered to employ Acting Assistant Director Cristia-Plant to train Mr. Millspaugh, and she has accepted this offer. He noted that the Budget Change Proposal (BCP) included an additional Associate

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Government Program Analyst position, to which Vice President Schmid responded that an additional position was long overdue. President Tynan commented that she has already been updated with the new Assistant Director status.

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 have been absent for medical reasons (AFMR) and their initial absence date:

- Captain Kasper – December 7, 2022
- Captain Aune – March 27, 2023

B) Monthly report on SFBP ship piloting business activity.

For the month of April 2023, Port Agent Carlier reported that all boats were operating normally except for P/V GOLDEN GATE, which has been offline between April 8-17 due to a problem with a valve body in the starboard reduction gear.

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 comment.

8. Pilot Evaluation Committee (Captain Robinson)

A) Report on the Pilot Evaluation Committee (PEC) meeting held on May 17, 2023.

The Pilot Evaluation Committee met on May 17, 2023. The members present were Captains Ruff, Slack, Wehr, and Robinson. Captain Garfinkle joined the meeting during the open session.

The four active trainees include Burns, Meyer, Olmstead, Pascucci, and Sappington. The trainees’ range of time in the program spans from 13 months to 31 months. All trainees have First Class Pilotage endorsements for unlimited tonnage upon San Francisco Bay on their federal licenses issued by the Coast Guard. All trainees are handling in all areas. Trainee Burns and Pascucci are in the evaluation stage of training. Trainee Olmsted has been placed in the evaluation stage of training and will be expected to safely pilot all

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ships without coaching from the licensed pilot. The licensed pilot is only expected to intervene to keep the ship safe.

In closed session, all trainees were individually interviewed and counseled on their progress in the training program. All the trainees are progressing at their own rates.

The next PEC meeting is scheduled for June 13, 2023, at 07:30 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.**

No action.

- 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.**

No action.

- 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.**

No action.

Vice President Schmid asked how long the evaluation period is, to which Captain Robinson responded a minimum of three months.

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

No safety violations to report.

- 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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No incidents to report.

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 noted that he limits his reporting of marine casualties to those incidents where a Board licensee would be employed. He reported two loss of propulsion (LOP) cases:

- On April 18, 2023, a foreign flagged chemical tanker experienced a loss of propulsion while inbound to San Francisco. The vessel continued to Anchorage 9 under tug escort and conducted repairs to the propulsion system. Class surveyors witnessed satisfactory operation of the main engines. LOP was not attributed to fuel switching. Case closed.
- On April 30, 2023, a foreign flagged freight ship experienced a loss of propulsion of its main engine approximately 150 feet from Pier 30 in the Port of Oakland while getting underway. The vessel immediately re-moored to the pier. When the vessel quickly switched from ahead to astern propulsion, a solenoid valve became stuck and caused the engine to shut down. The valve was replaced, and the main starting air line cleaned. A class surveyor attended the vessel and witnessed satisfactory operation of the system. LOP was not attributed to fuel switching. Case closed.

12. Joint Pilot Boat and Finance Committee (Commissioner Captain Carr)

Report on the Joint Pilot Boat and Finance Committee meeting held on April 11, 2023, which included discussions on (1) the status of the shipyard building of the P/V GOLDEN GATE, (2) Pilot Boat Program projected timeline and costs for new pilot boats, and (3) the implementation of Harbors and Navigation Code sections 1159.1 and 1194 and the identification and documentation of allowable costs, surcharge disbursement conditions, record keeping and auditing requirements that may be suitable for rulemaking actions.

Commissioner Carr stated that a recommendation for the board may be made at the next Joint Pilot Boat and Finance Committee on June 1, 2023. He commented that P/V GOLDEN GATE is still going through sea trials. President Tynan inquired as to when it is scheduled to be delivered. Captain Carlier responded that they expect it to be delivered in June.

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13. Finance Committee (Commissioner Captain Nyborg)

A) Report on the Finance Committee meeting held on May 23, 2023.

Commissioner Nyborg reported on the meeting held on May 23. The committee reviewed some of the conditions, revenue, and projections of the Governor’s board budget proposals related to the modernization project.

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 6.0% of all pilotage fees), and the revenues, expenditures, and reserve balance. Possible Board action to adjust the Board Operations Surcharge rate.**

The Board Operations Surcharge is currently at 6% of all pilotage fees, effective July 1, 2022. The surcharge remains below the 7.5% maximum allowed in the Harbors and Navigation Code. The goal is to fund the board operations with one year of operating budget in reserve to safeguard against fluctuations in tonnage or emergencies that may arise. The Committee discussed the proposed information technology (IT) modernization project, including the justification and the cost, and anticipated benefits to the Board. The proposal for this project will be brought to the full Board soon. It is estimated that the project could be paid for with the current surcharge rate, assuming no growth in pilotage revenue, plus some use of the reserve funds. Executive Director Garfinkle is hopeful that the IT project will streamline the routine management of licensees and trainees, and safeguard vital records that are currently vulnerable to destruction or loss in the event of a disaster. It may also allow some re-allocation of staff resources to address some state administrative requirements which are currently challenging to meet. The Committee recommends no change to the Board Operations Surcharge.

- 2. To adjust or not adjust the Pilot Continuing Education Surcharge rate (currently at \$60 per move). Possible Board action to adjust the Pilot Continuing Education Surcharge rate.**

The Pilot Continuing Education surcharge: Currently at \$60 per move (since July 1, 2022). The goal of managing this surcharge is to maintain \$450-\$500,000 in surcharge monies. This surcharge is now and will be slightly overfunded projecting an average of 7,000 moves per year. It was decided to keep the rate the same until it is clear that vessel moves are indeed improving over the long term. The Committee recommended no change to the Pilot Continuing Education Surcharge.

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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.

The Trainee Training Surcharge is currently at \$20/move/trainee (since January 1, 2022). The Committee considered many variables, including the reduction of the number of trainees actively training, the evaluation-phase status of some of those trainees, and the various possible outcomes of the current exam investigation. It was decided the best course of action for the near term is to recommend no change to this surcharge, with a potential rate change once it becomes clearer how many trainees will be in the program and the date of the next selection exam. The Committee recommended no change to the Pilot Trainee Training Surcharge.

4. To adjust or not adjust the Pilot Boat Surcharge rate (currently at \$0.0255 per gross registered ton). Possible Board action to adjust the Pilot Boat Surcharge.

The Pilot Boat Surcharge is currently at \$.0225 per gross registered ton (effective January 1, 2023). This surcharge is on track to collect funds within the guidance of AB 2056, which allows for an annual collection of \$2.5 million this fiscal year and \$5 million in the next fiscal year. At the current rate, this surcharge is projected to be fully collected in the coming fiscal year if tonnage remains at the current levels. The fund is restricted by statute to an ongoing annual collection of \$5M per fiscal year.

C) Finance Committee report to the Board on the Pilot Boat Maintenance Surcharge and its billings and collections, which surcharge ended of its own accord in December 2022.

The Pilot Boat Maintenance Surcharge ceased being collected at the end of 2022. The final accounting has been delayed because of some delayed collections from a couple of vessels that remain outstanding. This item will remain on the agenda for the next Finance Committee meeting.

MOTION: Commissioner moved to make no change to any of the surcharges.
Commissioner Carr seconded the motion.

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

ACTION: The motion was approved.

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Acting Assistant Director Cristia-Plant commented that an updated Finance Committee report will be posted online to complement the presentation that Commissioner Nyborg made for agenda item 13.

14. Board review of the status of the pilot fatigue prevention regulation rulemaking process with the Office of Administrative Law. (Executive Director Garfinkle/Board Counsel Eagan)

Executive Garfinkle stated that the regulations have been filed with the Office of Administrative Law, and the comment period ends on May 31, 2023. A request for a public hearing was received and that hearing has been scheduled for June 1, 2023, at 1:30 p.m. Commissioner Nyborg requested a copy of the request for a hearing, which will be provided to him.

15. Report on shipping activity regionally and within the Board’s jurisdiction (Captain McIntyre, SFBP/Mike Jacob, Pacific Merchant Shipping Association)

Mr. Jacob highlighted the West Coast Trade Report theme of losing market share and lower total volume in the face of a stronger dollar and the imposition of Trump tariffs. Rates for ocean carriage has dipped to 2019 average rates. A resolution on the collective bargaining agreement with the longshoremen and PMA is expected to happen in the next month or two. Captain McIntyre stated that the contract between the City of Oakland and the Oakland A’s for the use of Howard Terminal had expired on May 13, 2023. The challenge to the San Francisco Bay Conservation and Development Commission decision to remove port priority use of the terminal is on-going.

16. Closed session to consider issues raised concerning the 2022 Pilot Trainee Training Program examination and, in addition, various anonymous allegations concerning alleged irregularities in the conduct of the Board’s affairs involving pilots and Board personnel. (Board Counsel Eagan)

A closed session is authorized under the Open Meeting Act, Government Code section 11126, subdivisions (c)(1) and (e).

Board Counsel Eagan stated that he was advised not to participate in the closed session as he will be interviewed during the investigation. The new contact person will be Acting Executive Assistant Cristia-Plant, who reported that investigation updates had been received.

10:55 Recess

11:05 Closed session began for Agenda Item 16.

11:38 Closed session ends, open session resumed.

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17. Pilot Trainee Training Program Selection Examination (Executive Director Garfinkle)

Presentation of the 2022 ranked candidate eligibility list of those candidates who were successful in passing the 2022 Pilot Trainee Training Program selection examination. **Board action to accept the 2022 ranked candidate eligibility list of those candidates who were successful in passing the 2022 Pilot Trainee Training Program selection examination.**

Executive Director Garfinkle advised of no recommendation until Item 16 has been resolved. Commissioner Nyborg recognizes Captain Gallo’s (a successful candidate on the list) frustrations on delays. He stated that the Board needs to accept the list in June in order to start pilot training on July 1, 2023. Commissioner Hayes-White isn’t sure if a report will be available by July 1, 2023. Vice President Schmid hoped that the investigation will be completed by the end of June, and would want to wait for the results of the investigation before moving forward. Commissioner Carr suggested that we revisit the issue in June, but was cautious to not offer false hopes. President Tynan stated that she profoundly appreciates Captain Gallo’s concerns. She added that she has faith in the process and agrees with taking the issue up monthly.

18. Discussion of Vessel Assignments (Executive Director Garfinkle and Board Counsel Eagan)

The following matters will be discussed:

- **The role of the Port Agent in assignment of pilots who are fit for duty;**
- **The role of the Board in assignment of pilots who are fit for duty;**
- **The April 13, 2023, letter from attorney Robert Weaver objecting to the Port Agent’s refusal to make vessel assignments to Captain Ron Greger and demanding that the Port Agent dispatch Captain Greger for vessel assignments. The Board may go into closed session to discuss this letter. A closed session is authorized under the Open Meeting Act, Government Code section 11126, subdivision (e).**

Board Counsel Eagan acknowledged the alleged lack of notice about this content but noted that the documents provided were in most respects identical to those posted last month, with the addition of new communication from the Port Agent regarding a disassociation proceeding that has been initiated against Captain Greger. He added that the staff recommendation was virtually the same as last month, and noted that the provisions of the Open Meeting Act only require that the relevant documents be made available at the meeting.

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President Tynan inquired of each commissioner if there was a preference to address the agenda item today or next month. There was a discussion among Board members and the consensus was to defer the item to enable further preparation and to utilize the time to craft an agenda item that Board members agree with.

Mr. Jacob noted that he specifically requested informed comment in advance of the meeting and that he expected something more robust. He noted that he felt that staff's position was inconsistent with positions taken in prior litigation. He further questioned the lack of an order, lack of findings of fact, and clear statement of the statutory authority being acted upon. He noted that there was no shortage of criticism in the Public Records Act case, where he recalls the Board position was that they do not sit in the role of Port Agent in vessel assignments, and there may be an inconsistency with the current recommendation.

Mr Baldwin reiterated his objection to a discussion of agenda item 18 and urged the Board to not take up the item. He noted that the issue brings up fundamental tenets of the pilotage system and that there are due process issues at stake. He stated on June 14, an internal hearing at the SFBP will consider a disassociation determination regarding the pilot in question, which could obviate the need for a decision on this issue, and he recommended that the Board defer action for another month. He added that he believed that it should be up to the parties in interest to be making arguments and that it was inappropriate for Board staff to be an advocate.

Board Counsel Eagan reiterated that the closed session was solely to advise the Board members on the potential for litigation. He added that he takes issue with some of the critiques raised by Mr. Jacob. In defense of the staff recommendation, he noted that there are instances where the regulations take precedence over the Port Agent's discretion. In those instances, the regulations prevail over the Port Agent's decisions.

Commissioner Carr stated that he has a difficult time parsing the responsibilities of the Port Agent from the issue with dispatching individual pilots. He suggested that both deserved separate discussions. He requested to table agenda item 18 to the July meeting to then discuss the role of the Port Agent and dispatching pilots.

Commissioner Nyborg moved to take up this issue at the July meeting and Commissioner Carr seconded the motion. Following discussion on the motion, Commissioner Nyborg amended his motion to hold a separately scheduled meeting to discuss the matter.

MOTION: Commissioner Nyborg moved to defer agenda item 18 to a separately scheduled board meeting in July based on Board Member availability. Commissioner Schmid seconded the motion.

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

ACTION: The motion was approved.

19. Consideration of possible Board action in response to the matters discussed in item 18. (Executive Director Garfinkle and Board Counsel Eagan)

President Tynan confirmed with Executive Garfinkle that since agenda item 18 has been deferred, agenda item 19 has also been deferred.

20. Public comment on matters not on the agenda. (President Tynan)

There were no public comments.

21. Proposals for the next Board meeting agenda. (President Tynan)

Regarding the separately scheduled board meeting, President Tynan requested that the agenda item provide for clarifying and examining the Board's role with respect to the port agent's duties relative to assigning pilots, including an examination of both the statutory and case law, as well as any historical perspective on the assignment of pilots. She requested that interested parties and stakeholders submit their views in writing not later than 10 days prior to the meeting.

Mr. Baldwin asked whether, if a pilot is disassociated from the SFBP organization, the Port Agent is still required to dispatch the pilot. Executive Garfinkle responded that the question is too involved to be addressed under this agenda item. Mr. Baldwin felt that the agenda item will be rendered moot if the pilot has been disassociated prior to the separately scheduled meeting.

22. Adjournment.

MOTION: Commissioner Hayes-White moved to adjourn the meeting. Vice-President Schmid seconded the motion.

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

ACTION: The motion was approved.

President Tynan adjourned the meeting at 1:20 p.m.

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Submitted by:



Allen Garfinkle
Executive Director