

<p><b>Meeting Date:</b></p> <p><b>August 24, 2023</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 1 of 14</b></p>
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**Board Members Present**

Karen Tynan, President, Public Member  
Jennifer Ferrera Schmid, Vice President, Public Member  
Captain Robert Carr, Pilot Member  
Joanne Hayes-White, Public Member  
Captain Einar Nyborg, Pilot Member

**Board Members Absent**

Stephanie Dougherty, Designee of the Secretary of the California State Transportation Agency (CalSTA)  
Vacant, Wet Cargo Industry Member  
Vacant, Dry Cargo Industry Member

**Board Staff Present (in person and by phone)**

Allen Garfinkle, Executive Director  
Matthew Millspaugh, Assistant Director  
Dennis Eagan, Board Counsel  
Alethea Wong, Licensing and Training Programs Manager  
Charles Louie, Administrative Assistant II  
Roma Cristia-Plant, Deputy Secretary, Administration and Audits, California State Transportation Agency, on loan to the Board (by phone)

**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; Mike Jacob, Pacific Merchant Shipping Association (PMSA) Vice President and General Counsel; Kevin Baldwin, San Francisco Bar Pilots General Counsel; Captain Eric Robinson, SFBP; Captain Lillian Gallo; Captain Christian Barron; Captain Lynn Korwatch; Lea Prince (SFBP); Captain James Pascucci; Captain Matthew Burns; Laura Steinbach; Dave Connolly; Owen O’Mahony (BergDavis Public Affairs).

**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.**

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Due to a scheduling conflict, Mr. Jacob presented his report for Agenda Item 16, citing a PMSA trade report that will be available soon, that ongoing regional industry trends have not improved. He stated there is still no long-term solution for the impact of drought on the Panama Canal (water levels in Gatun Lake impact the operation of the locks). He reported that proposed ILWU-PMA contracts are not yet ratified, and the Collective Bargaining Agreement (CBA) ratification votes should be completed by the end of September 2023. He also mentioned that PMSA is in conversations with the Port of Oakland regarding the turning basin expansion.

### 3. Review and approval of Board meeting minutes (President Tynan)

#### **Board action to approve the minutes from the Board meetings held on June 22, 2023, and July 27, 2023.**

Board members were presented with the draft board meeting minutes from June 22, 2023. Executive Director Garfinkle, Captain McIntyre, Commissioners Nyborg and Carr made technical edits. There was no further discussion.

- MOTION:** Commissioner Carr moved to approve the draft minutes of the meeting held on June 22, 2023, as edited. Commissioner Hayes-White seconded the motion.
- VOTE:** YES: Tynan, Schmid, Carr, Hayes-White, and Nyborg.  
NO: None.  
ABSTAIN: None.
- ACTION:** The motion was approved.

Board members were presented with the draft board meeting minutes from July 27, 2023. Commissioner Nyborg and Captain McIntyre suggested technical edits. Regarding Commissioner Carr's request that opinions be identified as opinions, Board Counsel Eagan, in response to Commissioner Hayes-White's inquiry, responded that his legal advice represents his opinion, and that, regarding any statements of fact, he will provide the basis for such statements if support is requested. Executive Director Garfinkle commented that every attempt is made to accurately reflect what transpires at a given meeting in the minutes. There was no further discussion.

- MOTION:** Commissioner Nyborg moved to approve the draft minutes of the meeting held on July 27, 2023, as edited. Commissioner Schmid seconded the motion.
- VOTE:** YES: Tynan, Schmid, Nyborg, Carr, and Hayes-White.  
NO: None.  
ABSTAIN: None.

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**ACTION:** The motion was approved.

**4. President Announcements and Activities (President Tynan)**

President Tynan welcomed Captain Lynn Korwatch, Executive Director of the Marine Exchange (retired) who is one of three candidates currently nominated for the open Dry Cargo Industry Board member position, and introduced two new trainees: Captains Gallo and Barron.

**5. Board Member Announcements and Activities (Board Members)**

Commissioner Nyborg apologized to the new trainees for the onboarding delay. He also shared that he had attended a pilot gathering. Commissioner Carr mentioned that he had been contacted by an Oakland Unified School District student who, as a result of the SFBP outreach efforts, has expressed interest in a maritime career.

**6. Directors' Report (Executive Director Garfinkle)**

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

Executive Director Garfinkle reported on the following:

- On July 31, 2023, he received a Public Records Act (PRA) request from Captain Davis requesting information and correspondence related to the investigation into the 2022 Trainee Training Selection Exam.
- Also on July 31, he received a copy of the Annual Report to the Governor and Legislature for 2022 of the Board of Commissioners of Pilots of the State of New York. The report cited several statistics including 11,504 piloting assignments in 2022.
- On August 1, 2023, he received a PRA request from Captain Barton requesting information and correspondence related to the investigation into the 2022 Trainee Training Selection Exam.
- On August 4, 2023, he responded to a PRA request dated July 26, 2023, from an Eduardo Lazo concerning information related to the P/V RUBY PRINCESS.
- On August 8, 2023, he received an email from past Board President Dave Connolly notifying him of a database of “near-miss” incidents in the maritime sector. It is called the Safe Maritime Transportation System, and is being developed through an interagency agreement between the U.S. Department of Transportation’s Bureau of Transportation Statistics and the U.S. Maritime Administration.
- On August 10, 2023, he responded to the PRA request from Captain Davis, notifying him of an extension of his request to August 24, 2023.
- Also on August 10, 2023, he responded to the PRA request from Captain Barton,

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notifying him of an extension of his request to August 24, 2023.

- On August 12, 2023, he received a PRA request from Captain Fronenbroek requesting information related to the investigation into the 2022 Trainee Training Selection Exam.
- On August 15, 2023, he attended a meeting of the Finance Committee.
- On August 16, 2023, he attended a meeting of the Pilot Evaluation Committee.
- On August 22, 2023, he attended the orientation of two new trainees, Captains Barron and Gallo.
- Also on August 22, 2023, he responded to the PRA request from Captain Fronenbroek, notifying him of an extension of his request to September 5, 2023.
- Also on August 22, 2023, he received an email from Commissioner Nyborg, calling his attention to a UCSF issue concerning medical assessment turnover times.

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

Executive Director Garfinkle reported that, since the July 2023 Board meeting, the Board has issued license renewals to Captains Starnitzky, Laakso, Merritt, and Murney.

**C) Report on Board surcharges.**

Executive Director Garfinkle reported that the SFBP wired to the Board the surcharges collected in July 2023 in the amount of \$992,066.02, itemized as follows:

- Operations Surcharge                      \$239,411.21
- Pilot Training Surcharge                 \$ 31,295.97
- Trainee Surcharge                         \$ 39,673.88
- Pilot Boat Surcharge                      \$681,684.96

**D) Report of Pension Fiduciary.**

Pension Report for July 2023:

Executive Director Garfinkle reported that as of August 1, 2023, there are 84 pensioners.

Surcharge Rate for the Quarter	\$0.05781/gross registered ton
Rolling Look Back Period	April 2022 to March 2023
Monthly Tonnage	29,700,952.00
Surcharge Billing Total	\$1,715,283.61
Administrative Costs for the Month	\$2,223.95
Amount Distributed to Pension Beneficiaries	\$1,713,059.66
Total Monthly Pension Target	\$1,228,232.84
Amount Over/(Under) Target	\$487,050.77

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There was an adjustment in billings due to reductions made for medical emergencies of \$1,739.62, which means the calculated billings and actual billings would differ by this amount. The last COLA increase to the pension was effective on 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.**

Assistant Director Millspaugh reported on the following:

**Legislative Report:**

As previously reported, SB 544, authored by Senator John Laird, would amend Government Code Section 11123, and remove from the Bagley-Keene Open Meeting Act requirements that a state body post meeting agendas at all teleconference locations, that the meeting notice and agenda identify each teleconference location, and that each teleconference location be accessible to the public.

**Status of Bill:**

The bill was read a second time in the Assembly, amended, and re-referred to the Assembly Committee on Appropriations with the following amendments.

Amendments to the bill include the following:

- A majority of the members of the state body shall be present at the same physical location for at least one-half of the meetings of the state body each year.
- The provisions of the bill would be repealed on January 1, 2026.

BOPC staff will continue to track the bill and provide updates to the Board.

**Contracts Report:**

**SFBP – Trainee and Pilot Continuing Education Programs Support, and Surcharge Audit Support (23M900001)**

**Contract Expiration: June 30, 2023; New contract term is 5 years**

The Department of General Services (DGS) continues to review the Non-Competitive Bid (NCB) Justification. BOPC staff will provide information to DGS as requested but to

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date has not received approval of the NCB Justification. Once the justification process is completed, then BOPC staff can proceed with the regular contracting process.

**SFBP – Trainee and Pilot Continuing Education Program Support, and Surcharge Audit Support (Emergency) (23M900003)**

**Contract Term: July 1, 2023, to December 31, 2023**

The BOPC staff received a determination from DGS that they will not approve the emergency contract. At this point time there is no agreement in place for services related to the scope of work in this agreement. BOPC staff have consulted with DGS Legal regarding other possible paths for moving forward with the agreement and expect to receive additional information from DGS in the next two to three weeks.

**California State University Maritime Academy – Trainee Selection Exam Services  
Contract Expiration: TBD**

Board staff continues to put on hold a new contract with California State University Maritime Academy (Cal Maritime) for Trainee Selection Exam services, as 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**

Board staff is working on a new contract for a program audit of the Pilot Boat Program as required by statutes. BOPC staff met with SCO staff regarding the inter-agency agreement and expect to begin work on a new inter-agency agreement for the Pilot Boat Program in late September.

**Caltrans – IT Modernization Project Support**

**Contract Expiration Date: June 30, 2025**

Board staff submitted a separate interagency agreement between the Board and Caltrans to the California Highway Patrol for Caltrans support for the IT Modernization Project. CHP Contract staff continue to work drafting the agreement.

**Request for Offer – IT Modernization Project Manager (23M900002)**

**Contract Expiration Date: TBD**

BOPC staff, Caltrans IT Staff and CHP Contract staff continue to work towards the release of a Request for Offer (RFO) to solicit proposals from state-certified IT Project Manager contractors to lead the overall project planning for the IT Modernization Project. BOPC staff continue working closely with Caltrans and CHP IT staff and expect the RFO to be released by mid-September.

In response to an inquiry on what action is taken to address payment collection, when services are still being provided and there is no contract in place, Executive Director

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Garfinkle replied that possible avenues of recompense could be in the form of a claim made to the state for services rendered. He also clarified how the DGS non-competitive bid (NCB) process delays Port Revel air travel reimbursement. He also announced the retirement of Veronica Boe from Cal Maritime. Captain McIntyre expressed a concern about operating without a contract and noted that demands on SFBP’s administrative resources are ongoing.

**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 Aune since March 27, 2023

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. Mitigating measures include, but are not limited to, suspending continuing professional development protocols, cancelling scheduled meetings, cancelling previously granted compensating time off requests, suspending SFBP internal working rules, and calling in off-watch pilots.

Port Agent Carlier reported there are currently 50 licensees on the SFBP roster.

In July, there were 42 MRP exceptions, with the shortest rest period being 10 hours.

In response to Vice President Schmid’s question on the high number of MRP exceptions, Port Agent Carlier responded that most were due to the compression of jobs in certain time periods related to longshore working hours.

**B) Monthly report on SFBP ship piloting business activity.**

For the month of July, Port Agent Carlier reported normal operations for P/Vs CALIFORNIA, DRAKE, GOLDEN GATE, and PITTSBURG. P/V SAN FRANCISCO was in the shipyard from May 12, 2023, to August 25, 2023, and is estimated to return to service September 15, 2023.

In response to Commissioner Hayes-White regarding the sale of the PV GOLDENGATE (old), Commissioner Nyborg stated that the boat has been listed with a broker for \$667K with the funds going to the pilot boat finances and 6% going to the broker. This vessel is

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not operable in California because it does not pass the new environmental protection emissions regulations.

He reported that vessel moves for September 2023 were as follows:

- Bar Crossings: 495
- Bay Moves: 131
- River Moves: 63
- Total Moves: 689
- Gross Registered Tons (GRT): 29.7 million

He also reported that when comparing 2023 year-to-date vessel move data with the same period in 2022, total moves were up 8.1% and GRT was up 21.6%.

- 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 this item.

**8. Pilot Evaluation Committee (Captain Robinson)**

- A) **Report on the Pilot Evaluation Committee (PEC) meeting held on August 16, 2023.**

PEC Committee Chair Captain Robinson reported on the following:

- The PEC met on August 16, 2023, and in attendance were Committee members Captains Bridgman, Ruff, Slack, Wehr, and Robinson.
- Trainees were interviewed and counseled individually in closed session by the PEC members on their progress in the Pilot Trainee Training Program.
- There are currently four trainees: Captains Burns, Meyer, Olmsted, and Pascucci. The trainees’ range of time in the program is from 16 months to 34 months.
- All trainees have their First-Class pilotage endorsements for unlimited tonnage on San Francisco Bay by the U.S. Coast Guard.
- Captains Burns, Olmsted, Pascucci, Meyer are in the evaluation stage of the Pilot Trainee Training Program and are handling vessels as much as possible along with the occasional observation trip to watch a licensed pilot.
- All trainees are handling in all areas and are progressing at their own rates.
- The next PEC meeting is scheduled for September 13, 2023, at 7:30 a.m. at the Board office.



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**B) 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.**

Captain Robinson presented the completion details of the Pilot Trainee Training Program of both Trainees Burns and Pascucci. He informed the Board that the PEC unanimously recommended that the Board issue a Certificate of Completion to both Burns and Pascucci for successfully completing the Pilot Trainee Training Program.

Executive Director Garfinkle verified that Trainee Burns has met all requirements of Section 214 of the California Code of Regulations and recommended a Certificate of Completion be issued to Trainee Burns.

**MOTION:** Commissioner Nyborg moved to issue a Certificate of Completion to Trainee Burns, signifying successful completion the Pilot Trainee Training Program, as of today, August 24, 2023. Vice President Schmid seconded the motion.

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

ABSTAIN: None.

**ACTION:** The motion was approved.

Executive Director Garfinkle verified that Trainee Pascucci has met all requirements of Section 214 of the California Code of Regulations and recommended a Certificate of Completion be issued to Trainee Pascucci.

**MOTION:** Commissioner Carr moved to issue a Certificate of Completion to Trainee Pascucci, signifying successful completion of the Pilot Trainee Training Program, as of today, August 24, 2023. Commissioner Hayes-White seconded the motion.

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

ABSTAIN: None.

**ACTION:** The motion was approved.

**D) Possible recommendation from the Executive Director for the Board to issue a state**

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**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.**

President Tynan inquired of Executive Director Garfinkle if he had received an application for licensing from Captain Burns. Mr. Garfinkle replied that he had, and that Captain Burns had met all the requirements for licensure. He recommended that Captain Burns be granted a state pilot license.

- MOTION:** Vice President Schmid moved to issue a state pilot license to trainee Burns as of today, August 24, 2023. Commissioner Carr seconded the motion.
- VOTE:** YES: Tynan, Schmid, Nyborg, Carr, and Hayes-White.  
NO: None.  
ABSTAIN: None.
- ACTION:** The motion was approved.

President Tynan inquired of Executive Director Garfinkle if he had received an application for licensing from Captain Pascucci. Mr. Garfinkle replied that he had, and that Captain Pascucci had met all the requirements for licensure. He recommended that Captain Pascucci be granted a state pilot license.

- MOTION:** Commissioner Nyborg moved to issue a state pilot license to trainee Pascucci as of today, August 24, 2023. Vice President Schmid seconded the motion.
- VOTE:** YES: Tynan, Schmid, Nyborg, Carr, and Hayes-White.  
NO: None.  
ABSTAIN: None.
- ACTION:** The motion was approved.

*Recess at 10:30 a.m.*

*Captains Burns and Pascucci were sworn in as State licensees.*

*Open Session resumed at 10:40 a.m.*

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

None to report.

**10. Incident Review Committee—Reportable Piloting Events (Executive Director**

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**Garfinkle) (Reportable piloting events occurring up to the start of the meeting will be reported on.)**

- A) Progress report on the June 30, 2023, event involving the M/V EVER LOGIC, which was passing the M/V EVER FASHION, which suffered gangway damage as the result of hydraulic interaction.**

Executive Director Garfinkle reported that the Incident Review Committee (IRC) is still investigating this event. No Board action is necessary as the investigation is still within the 90-day statutory deadline.

- B) Progress report on the July 6, 2023, event involving the P/V RUBY PRINCESS, which made unintended contact with Pier 27.**

Executive Director Garfinkle reported that the IRC is still investigating this event. No Board action is necessary as the investigation is still within the 90-day statutory deadline.

- C) Progress report on the July 23, 2023, event involving the M/V NEW HANDY which made unintended contact with San Joaquin River Light #39.**

Executive Director Garfinkle reported that the IRC is still investigating this event. No Board action is necessary as the investigation is still within the 90-day statutory deadline.

- D) Progress report on the July 24, 2023, event involving the M/V TURICUM, which made unintended contact with the dock at Richmond, CA.**

Executive Director Garfinkle reported that the IRC is still investigating this event. No Board action is necessary as the investigation is still within the 90-day statutory deadline.

Commissioner Carr inquired if each case will close consecutively and whether reporting on them sequentially might introduce avoidable delays in reporting. Executive Director Garfinkle replied that all four investigations are ongoing at the same time but will not necessarily close sequentially.

## **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 port safety and security cases to those incidents where a Board licensee would be employed.)

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Executive Director Garfinkle announced that the Harbor Safety Committee did not meet in August, therefore two months of reports will be presented in September.

**12. Status report on the regulatory process for mitigating pilot fatigue (Executive Director Garfinkle)**

Executive Director Garfinkle confirmed that the regulatory paperwork supporting the pilot fatigue regulatory initiative has been submitted to the Office of Administrative Law and remarked that there is a 30-day deadline for approval.

**13. Status report on the Board’s Information Technology Modernization Project. (Executive Director Garfinkle)**

Executive Director Garfinkle reported that the Board’s Information Technology Modernization Project is still in the contractual stage and when that is complete, work will begin.

**14. Pilot Vessel Condition and Valuation Survey (Port Agent Carlier)**

**Report by the Port Agent on progress made resolving the outstanding recommendations identified in the *Pilot Boat GOLDEN GATE Condition and Valuation* report dated July 10, 2023, prepared by Paul Fredrickson from Charles Taylor Marine Technical Services.**

Port Agent Carlier stated five recommendations noted in the original report were remedied. In response to Commissioner Nyborg’s inquiry about whether a Board action should take place, Executive Director Garfinkle explained that no further Board action is needed because the acceptance vote from last month was contingent on corrections being made and reported on. Captain McIntyre announced that the GOLDEN GATE christening party will be held on October 12, 2023, and to mark our calendars.

**15. Board discussion concerning Board of Pilot Commissioners website protocols. Discussion and possible formation of Ad Hoc Committee to review website protocols (Executive Director Garfinkle, Board Counsel Eagan)**

Board Counsel Eagan explained that the Open Meeting Act guides staff actions in posting documents to the Board website for public inspection, where the documents are related to substantive items on the agenda, but he also noted that on occasion closed session documents are not made public due to attorney-client privilege or other exceptions to the Open Meeting Act. He further explained that any documents discussed during open session are considered

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in the public domain. and must be available both to members of the public at the meeting and to members of the public participating remotely. In response to President Tynan’s inquiry on personal identifying information, Board Counsel Eagan stated that he will have a more specific answer at the next Board meeting. Executive Director Garfinkle explained that when documents are provided to the Board members to make a Board decision, the same documents should be provided to the public. He stated that staff is careful not to publish personal information, and on a case-by-case basis, SFBP will be consulted regarding possible redacting of confidential business information or trade secrets. Mr. Baldwin disagreed with Board Counsel Eagan’s Bagley-Keene Act interpretation of what is required to be posted on the Board’s website.

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

*(Refer to Agenda Item 2 for Mike Jacob’s report.)* Captain McIntyre reported that cargo traffic continues to remain down in Los Angeles and Long Beach, while Oakland continues to struggle to attract new export cargo traffic.

**17. Closed session to consider a report to the public of an investigation of various anonymous and other allegations concerning alleged irregularities in the Board’s administration of the 2022 Pilot Trainee Training Program examination and conduct of the Board’s affairs involving pilots and Board personnel. (Dennis Eagan)**

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

*Closed session started at 11:22 a.m.  
Open Session resumed at 12:33 p.m.*

Board Counsel Eagan summarized the allegations investigated by the Department of Justice (DOJ), which concluded that some allegations were insufficient to warrant an investigation by the DOJ. A summary of the DOJ’s conclusions on the remaining allegations will be posted to the BOPC website.

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

There were no public comments.

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

Executive Director Garfinkle proposed to have a Finance item. President Tynan proposed to have a website reporting item.

**20. Adjournment.**

**MOTION:** Commissioner Hayes-White moved to adjourn the meeting. President Tynan seconded the motion.

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

**ACTION:** The motion was approved, and the meeting was adjourned at 12:39 p.m.

Submitted by:



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Allen Garfinkle  
Executive Director