

<p>Meeting Date:</p> <p>April 21, 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 17</p>
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Board Members Present

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

Board Members Absent

Captain Oscar Prada, Tanker Company Industry 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

Port Agent John Carlier, SFBP President and Port Agent; Captain Anne McIntyre, SFBP Business Director; Captain Eric Robinson, SFBP; and Dan Noyes, KGO TV.

OPEN MEETING AGENDA

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

President Hayes-White called the meeting to order at 9:41 a.m.

Administrative Assistant II Wong called the roll and confirmed a quorum.

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

The draft meeting minutes from January 27, 2022, were not available for approval and approval was deferred to the next Board meeting on April 21, 2022.

A) Board action to approve the minutes from the Board meeting held on October 28, 2021.

Board members were presented with the draft meeting minutes from October 28, 2021. Commissioner Nyborg requested minor edits. There was no further discussion.

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MOTION: Commissioner Nyborg moved to approve the draft minutes of the meeting held on October 28, 2021, as amended. Commissioner Carr seconded the motion.

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

ACTION: The motion was approved.

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

The draft meeting minutes from January 27, 2022 were not available for approval and approval was deferred to the next Board meeting on May 26, 2022

C) Board action to approve the minutes from the Board meeting held on February 24, 2022.

Board members were presented with the draft meeting minutes from February 24, 2022. Commissioner Carr requested minor edits. There was no further discussion.

MOTION: Commissioner Carr moved to approve the draft minutes of the meeting held on February 24, 2022, as amended. Commissioner Schmid seconded the motion.

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

ACTION: The motion was approved.

D) Board action to approve the minutes from the Board meeting held on March 24, 2022.

Board members were presented with the draft meeting minutes from March 24, 2022. Commissioner Dougherty requested minor edits. There was no further discussion.

MOTION: Commissioner Carr moved to approve the draft minutes of the meeting held on March 24, 2022, as amended. Commissioner Tynan seconded the motion.

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

ACTION: The motion was approved.

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

There were no comments.

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

President Hayes-White welcomed everyone back into the office for in-person public Board meetings.

5. Board Member Announcements and Activities (Board Members)

Vice President Schmid thanked Captain McIntyre, Captain Robinson, and the Pilot Evaluation Committee (PEC) for providing an overview of the simulator exam. She shared that she found it very educational. Captain Nyborg thanked Vice President Schmid for attending to get a full understanding of the exam process.

Board member Dougherty stated CalSTA staff had an opportunity to meet with both SFBP and PMSA to discuss their thoughts on the rate setting process recommendations.

Commissioner Tynan stated that she would like to visit local marine terminals to learn more about how pilots go about their work, and asked for suggestions from both the Board and the public on the best way to safely familiarize herself with the ports.

6. Directors' Report (Executive Director Garfinkle)

A) Correspondence and activities since the Board meeting held on March 24, 2022.

Executive Director Garfinkle reported on the following:

- On March 28, 2022, he heard from Carolyn Kurtz and, due to a Florida State Pilotage rate hearing conflict, she regretted she would not be able to participate in our exam process.
- On April 4, 2022, we submitted our Annual Report to the Legislature to CalSTA for review.
- Also on April 4, 2022, we received a copy of the SFBP Section 237(d) report for the period January 1, 2021, to December 31, 2021.
- On April 6, 2022, he received an email from Don Marcus, President of the Masters, Mates, and Pilots Union, passing on a request for support to nominate the WWII-era U.S. Maritime Officers Training Station in Alameda to the National Register of Historic Places. Apparently, the process begins at the State Office of Historic Preservation where there will be a public hearing on April 29, at 9 a.m. in Sacramento. They are requesting letters of support be sent to the Office of Historic Preservation. He can provide more information if anyone is interested.

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- On April 7, 2022, we received a copy of the Department of General Services 2022-2023 Strategic Plan. Priority areas are to develop procurement and acquisition efficiencies, implement progressive real estate management and design, advance and institutionalize sustainable practices, and promote workforce agility.
- On April 8, 2022, Board staff received a copy of the SFBP and the SFBP Benevolent and Protective Association Consolidating Financial Statements for the year ending December 31, 2021. This financial statement is typically reviewed by the Finance Committee.
- On April 11, 2022, Board staff received confirmation that Allison Schulte, a member of the Association of Maryland Pilots, will be participating in our 2022 Trainee Selection exam as a simulator evaluator.
- Also on April 11, 2022, Board Counsel Dennis Eagan confirmed that waivers for holding virtual meetings had expired and that we were to hold in-person public meetings.
- On April 13, 2022, he joined the PEC at a simulator development session at the California State University Maritime Academy (CMA). Following the simulator development, PEC members were joined by Ann McIntyre in a selection exam interview module development session.
- Also on April 13, 2022, we received a copy of Executive Order N-6-22, ordering all state agencies and departments to review contracts for compliance with federal sanctions on doing business with Russian entities.
- On Friday, April 15, 2022, the window for submitting applications to our upcoming selection exam closed. Since we allowed for post-marked compliance, we also received some applications the following week. Thus far we have received 45 applications for the program.
- On April 19, 2022, the University of California San Francisco (UCSF) provided us with a curriculum vitae for a new examining physician to participate in our medical assessment program, a Dr. Zaw Maung, MD.
- Also on April 19, 2022, Assistant Director Barton and I attended an entrance conference with auditors from the State Controller’s Office where we discussed details of the 2021 surcharge audit.
- And finally, on April 19, 2022, Board staff received an invitation to the Marine Exchange and Port of Oakland’s annual May Day and Maritime Day celebration, to be held at Scott’s Jack London Square, May 12, from 1630-1930.

B) Report on pilot licensing matters since the Board meeting held on March 24, 2022.

Executive Director Garfinkle reported that since the March Board meeting, the board has issued license renewals to Captains Bridgman, Billingsley, Corbett, and Murray.

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C) Report on Board surcharges.

Executive Director Garfinkle reported he does not have anything to report on for the March surcharge collection at this time. He stated that SFBP is still working with the software developers to assure the numbers are accurate.

Report of Pension Fiduciary:

Executive Director Garfinkle reported as of April 1, 2022, we currently have 84 pensioners, and one disability pension applied for by Captain Kirk.

He reported the pension surcharge rate has been set for the First Quarter of 2022 at \$0.05006, based on a 12-month tonnage lookback period that ran from October 2020 through September 2021.

He reported that the surcharge rate for March was \$0.05006, and the tonnage for March was 23,442,989, resulting in collections totaling \$1,173,556.03, on a target of \$1,116,199.04, resulting in a variance of \$57,357.00 over target (compared to February's variance of \$198,040.13 under target). The administrative costs for the month totaled \$2,969.90, making the total distribution for March \$1,170,586.13.

He reported that 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 (IRC) reports.

Executive Director Garfinkle reported that at the March Board meeting the Board approved findings, conclusions, and an order in the IRC event involving the HYUNDAI NEPTUNE interacting with the THALASSA AVRA. The order was that Captain Aune, the pilot on the HYUNDAI NEPTUNE, prepare a written report explaining this interaction and how such interactions at Oakland Berth 37 involving inbound ULCVs on an ebb current can be avoided in the future. The order further calls for the report to be approved by the Port Agent and within 60 days of the order (May 23, 2022), be presented to pilots in written form and discussed with all pilots orally in an online meeting or meetings. Capt. Aune is also to report back to the Executive Director that the foregoing requirements were met. The Port Agent was also ordered to distribute to all existing and future pilots the two studies by Coast and Harbor Engineering and all similar studies in the future.

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E) Report on legislative activities and contractual matters.

Assistant Director Jennifer Barton reported on the following:

Report on Legislative Matters:

- AB 2056, introduced by Assembly Member Grayson on February 14, 2022, proposes to amend HNC 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 4/20/2022: On 4/06/2022, the California Assembly Committee of Appropriations made an affirmative recommendation (Do Pass). On 4/07/2022, the bill was read a second time and ordered to a third reading. The bill is currently with the Assembly. Unless passage is refused, after the third reading, the bill will move to the Senate.

Report on Contractual Matters:

New/Renewing:

- UCSF Pilot/Trainee Medical Assessments: The agreement is going through CHP's review process. The Assistant Director stated she alerted CHP that a second examining physician will be added to the contract prior to execution. This week Board staff received documentation for that physician from UCSF, which the Executive Director has determined meets the minimum qualifications for appointment as an examining physician set forth in Title 7, CCR Section 217.45(b). The examining physician's information will be added to the draft agreement prior to execution. With this addition, the new contract will include a primary Medical Review Officer and two examining physicians. [\(Estimated Completion Date is 6/30/2022\)](#)
- Manned Model Training Services: ARTELIA has provided recommended edits to the draft agreement. CHP legal counsel is reviewing their requested edits. [\(Estimated Completion Date is 6/30/2022\)](#)
- The marine investigation service contracts with Captains Hill and O'Callaghan have been executed. The new contracts will be in place for three fiscal years, 22/23 through 24/25. [\(Completed\)](#)
- Trainee Drug Testing: BOPC staff is in the process of obtaining vendor quotes for a fair and reasonable agreement. [\(Estimated Completion Date is 06/30/2022\)](#)
- CMA/Pilot Trainee Training Program: On April 8, the agreement was sent to CMA for their signature. New Contract period is 7/1/2022 through 6/30/2024. [\(Estimated Completion Date is 06/01/2022\)](#)

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- To comply with Executive Order (EO) N-6-22, on behalf of the BOPC, CHP has sent notifications to inform the BOPC's contractors of their requirement to comply with the economic sanctions imposed by the Governor as outlined in EO N-6-22.

7. Port Agent's Report (Port Agent Captain Carlier)

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

The following pilots were absent for medical reasons (AFMR):

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

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, SFPB 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 compensated time off requests, suspending SFBP internal working rules, or calling in off-watch pilots.

There are currently 50 licensed pilots.

In March there were 11 MRP exceptions, with the shortest rest period being 10.0 hours.

B) Monthly report on SFBP ship piloting business activity.

For the month of February, there were normal operations for all pilot vessels except for P/V PITTSBURG, which was laid up starting March 9, 2022.

Billed vessel moves for March 2022 were as follows:

- Bar Crossings: 461
- Bay Moves: 107
- River Moves: 61
- Total Moves: 629
- Gross Registered Tons (GRT): 23.4 million

When comparing 2022 vessel move data with the same period in 2021, total moves were down 3.7% and GRT was down 11.5%.

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- C) **Monthly confidential written report of SFBP pilots who have been absent for medical reasons (AFMR). The Board may go into closed session to discuss contents of the Port Agent’s confidential report as authorized by Harbors and Navigation Code § 1157.1.**

There was no discussion of the confidential written report of pilots who have been absent for medical reasons. There was no closed discussion of this item.

8. Pilot Evaluation Committee (Captain Robinson)

- A) **Report on the Pilot Evaluation Committee (PEC) meeting held on April 21, 2022.**

PEC Chair Captain Robinson reported on the following:

- The PEC met on April 20, 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.
- The PEC continues to work at the California Maritime Academy developing the next simulator exam scheduled for June 2022. Several more days are scheduled for simulator development leading up to the exam date. In addition to the PEC members, two additional pilot volunteers are required to conn the ship through the simulation. Captain Robinson explained that valuable information is obtained with every simulation run. The PEC has also been involved in working with Cal HR on the interview portion of the next exam.
- 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 seven trainees: Captains Adams, Barnum, Burns, Olmsted, Pascucci, Sappington, and Snapp. The trainees’ range of time in the program is 5 months to 30 months.
- Captain Adams, Olmstead, Barnum, and Snapp have First Class pilotage endorsement for unlimited tonnage upon San Francisco Bay issued by the Coast Guard on their federal licenses.
- Captains Adams, Olmstead, Barnum, and Snapp are handling in all areas. Captain Adams is currently on probation and continues to work on consistency in his piloting.
- Captains Burns, Pascucci, Sappington are acquiring route trips and handling or part handling vessels in all areas.
- 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 May 18, 2022, at 7:30 a.m. at the Board office.

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- 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.

- 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 April 28, 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 staff workload. The IRC requests an extension to May 26, 2022. There is no danger to public safety due to the delay in presenting the report.

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MOTION: Commissioner Carr 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 May 26, 2022.

Commissioner Schmid seconded the motion.

VOTE: YES: Hayes-White, Schmid, Nyborg, Carr, and Tynan.

NO: None.

ABSTAIN: None.

ACTION: The motion was approved.

Executive Director Garfinkle thanked the Commissioners for the extension.

- B) Status report of interaction between the M/V CHARLIE and the moored M/V EVA SHANGHAI in the Port of Stockton on October 17, 2021. Possible Board action to grant the Incident Review Committee an extension to present the M/V CHARLIE report at the Board meeting to be held on April 28, 2022.**

President Hayes-White noted this item will be covered under Agenda Item #16.

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 steering and an equipment failure from the March 2022 Significant Port Safety and Security Cases.

Executive Director Garfinkle shared that a foreign-flagged bulk carrier experienced a loss of steering while getting underway from Redwood City. The pilot onboard reported the casualty, and the two tugs alongside immediately escorted the vessel back to berth. The cause was identified as the system relief/safety valve being stuck in a slightly open position, not allowing for enough pressure to build up to move the rudder. The safety/relief valve was inspected, cleaned, and thoroughly flushed. The steering was then satisfactorily tested and approved by an attending class surveyor. The case was closed.

Executive Director Garfinkle shared that a foreign-flagged bulk carrier reported accidentally dropping the anchor while transiting outbound from San Francisco in the main ship channel, approximately one nautical mile south of Point Bonita. The vessel reported that engines were functioning properly, and the vessel was able to maintain position. A tug was dispatched to assist the vessel with pulling up the anchor. Vessel retrieved the anchor with no other issues reported. The case was closed.

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12. Discussion of conflicts of interest issues regarding the Assistant Director (Executive Director Garfinkle and Board Counsel Eagan)

Board Counsel Eagan explained the new Assistant Director Jennifer Barton is married to a trainee applicant who is on the current eligibility list, which is due to expire this summer. He may become a pilot trainee and if he satisfactorily completes the pilot trainee training program, he could become a pilot. The Assistant Director’s relationship brings up the question of whether there is a conflict of interest.

Board Counsel Eagan stated he provided the Board with two memos. The first memo was issued on March 21, 2022. To address additional questions from two of the Board members, Board Counsel Eagan provided a second memo on April 14, 2022. Board Counsel Eagan stated he has nothing more to add at this time. He has read the April 20, 2022 letter from SFBP addressed to President Hayes-White, and it does not change his conclusion expressed in his two memos.

President Hayes-White clarified and Board Counsel Eagan confirmed, the memos to the Board dated March 21, 2022, and April 14, 2022 were delivered under attorney-client privilege.

Executive Director Garfinkle stated he had no additional comments.

Commissioner Nyborg inquired if a discussion could occur today if the memos are confidential. Board Counsel Eagan explained as the attorney he can’t waive the client privilege, however, as the client, the Board can choose to make the memos public. Board Counsel Eagan explained the memos were drafted after researching, analyzing, and applying the law to this case.

Board Counsel Eagan explained the Board could vote to make the memos public. It would require four affirmative votes.

Commissioner Tynan asked Board Counsel Eagan if one individual Board member can waive the attorney-client privilege. Board Counsel Eagan explained since the memos were addressed to all Board members, not just one individual Board member could waive the privilege; rather, only the Board could waive the attorney-client privilege.

Commissioner Tynan asked if the Board has waived their attorney-client privilege in the past. President Hayes-White stated she was not aware of a time when attorney-client privilege has been waived during her three-year term. Board Counsel Eagan stated the most sensitive attorney advice is usually involving pending litigation, concerning which the client would not want the opposing side to know about. Board Counsel Eagan doesn’t recall a waiver happening in the past; however, this type of situation hasn’t arisen before. He explained that each situation must be viewed on its own merits.

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Commissioner Tynan inquired if a waiver was not agreed to, how would the Board ask questions, could they discuss the item in a closed session. Board Counsel Eagan stated the attorney-client privilege is only with the two memos and there is no basis, in his opinion, for holding a closed session, such as in the case of a “personnel exception.” Board Counsel Eagan explained the term “personnel exception” references particular types of personnel actions that may be undertaken in closed session under the Brown Act (and also Bagley-Keene), including, “appointment, employment, evaluation of performance, discipline, or dismissal of a public employee.”

Commissioner Tynan inquired if Board members have additional questions related to the two memos, can the Board go into closed session to ask Board Counsel specific questions. Board Counsel Eagan stated there is no authorization to go into closed session to discuss the memos. He explained the options available are to discuss the memos openly or to send questions directly to Board Counsel in writing.

Commissioner Tynan clarified, in conclusion, that the Board will have to vote to waive attorney-client privilege to discuss today or send written questions to Board Counsel. Board Counsel Eagan reiterated that whether the attorney-client privilege is waived and the memos made public is up to the Board.

Commissioner Nyborg stated if a similar situation existed at the DMV, that agency is large enough to avoid a conflict, however, because the Board is very intimate, the law applied in Board Counsel’s memos cannot be applied in this situation. He stated Board information, such as Not Fit for Duty (NFFD), suspensions, and accidents, is very personal compared to the DMV.

Board Counsel Eagan summarized his advice, stating when potential conflict of interest situations arise, the facts of each situation would be reviewed to determine if it is or isn’t something that the Assistant Director should participate in. He stated, for example, if the Assistant Director’s spouse was on the eligibility list or in the pilot trainee training program, then she would not participate in developing a recommendation for changes to the trainee stipend. He explained you can’t generalize, rather you must approach conflict of interest on a case-by-case basis. He stated the SFBP letter is highly speculative and it is not necessary to wall off entire areas the Assistant Director can’t work on.

Board Counsel Eagan stated the SFBP letter brought up concerns of privacy issues and he explained this is different than a conflict of interest issue. He stated attorneys understand they cannot discuss confidential information with their spouses and the same approach would be and should be taken by the Assistant Director, particularly matters that involve SFBP. The Assistant Director shouldn’t be sharing confidential information with anyone outside the Board staff.

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Board Counsel Eagan stated the SFBP letter brought up concerns with the spouse sharing SFBP information with the Assistant Director. Board Counsel Eagan explained, this is a question for SFBP and what steps they take to ensure their members know what they should and should not disclose.

Executive Director Garfinkle stated he is hearing an underlying thread of privacy concerns. He clarified that the Board staff are not a decision makers. The Board is the decision maker and regulator. He explained, the BOPC does not receive or maintain medical records. The Board staff receive a Fit for Duty (FFD) form only, all medical records stay at UCSF. He went on to explain that the Assistant Director is not involved in incident reviews and isn't privy to Incident Review Committee information until Board members receive the information. He explained that while the Board staff does record keeping for the PEC, the PEC reviews and analyzes all the training records, and the only role staff has is compiling the records and putting the information into a digestible format for the PEC. When Board staff is involved with participating in developing recommendations for the Board, we will review those situations case by case to determine if the Assistant Director should or should not participate. He added that the staff's role in the training program is primarily administrative.

Commissioner Tynan reminded everyone the Board has not chosen to waive their attorney-client privilege at this time.

Commissioner Tynan stated she is concerned the conflict of interest discussion and analysis relies on the premise that the Assistant Director's participation in the Pilot Power Committee recommendation was ministerial, but there was analysis performed not just data gathering to develop the recommendation provided to the Pilot Power Committee. She stated she is troubled the Board wasn't notified of the relationship prior to a presentation of a recommendation.

Commissioner Carr stated he doesn't understand why we need to keep the memo confidential, as it laid out the Board Counsel's position that there is no inherent conflict. Commissioner Carr stated he feels there is a potential for conflict. He is concerned because one argument from PMSA is neutrality of the Board, when objecting to the Board taking part in the rate setting process. He stated the public doesn't know that the Board staff isn't involved in the decision-making process. He stated in our industry optics is a big deal. SFBP has done a fantastic job changing the local perception of nepotism. Commissioner Carr referenced himself as an example of someone coming from the east coast with no relationships within the SFBP. Commissioner Carr stated the public and media will look at this negatively. He stated the Pilots are very concerned and as a Board member he is concerned and wants to come up with a way to address the issue.

President Hayes-White stated this issue is worthy of further discussion as we move forward. She stated she has nothing but positive remarks to say about the Assistant Director. She added that she thinks perception means a lot and transparency should be valued. She noted

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that the situation tends to add another layer of complexity and since SFBP, the group the Board oversees, states they have concerns, she has concerns. President Hayes-White stated she doesn't have solutions and the issues raised are very important. She explained that the Assistant Director is an exceptional person, but we need to look at what perception people may have.

President Hayes-White called for a ten-minute break at 11:04am.

President Hayes-White left the Board meeting early and handed the meeting over to Vice President Schmid.

Vice President Schmid reconvened the meeting at 11:14am.

Vice President Schmid suggested that we continue this item at the next Board meeting since President Hayes-White had to leave early and Commissioner Prada was unable to participate.

Board member Dougherty asked if Board Counsel Eagan could explain how conflict of interest is managed and how rules are put forward to help identify, investigate, and disclose how a person can recuse themselves in a conflict of interest situation. She requested a presentation, guidance on how we can manage this potential conflict going forward. Board Counsel Eagan stated he will meet with the Executive Director and Assistant Director to discuss how to identify potential situations to conflicts and how to proceed in a particular manner. Board Counsel Eagan explained that the Assistant Director was cc'd on the memos and is aware of the issue and that he and the Executive Director will follow up with the Assistant Director to confirm she understands. Based on the SFBP letter, we will ensure she understands the concept of personal information under the Harbors and Navigation Code.

Assistant Director Barton requested the two memos from Board Counsel Eagan be made public. Board Counsel Eagan did not object to the request and stated it could be a good thing if the Board wished to make the memos public.

The discussion will be continued at the next Board meeting.

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

Commissioner Carr stated he has not received any new updates from the Board staff or CalSTA and inquired if Executive Director Garfinkle had received any responses since he distributed the Committee's Final Report to the Legislatures and Governor. The Executive Director stated he has not received any responses.

Board Counsel Eagan asked Board member Dougherty if she was aware of any progress with the report. She stated CalSTA has had a chance to brief the Secretary on the report and is in

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the fact-finding stage of analyzing the recommendations. Commissioner Carr offered to assist with questions CalSTA may have and stated the Committee is available to answer questions. He stated the goal is to move the recommended legislative changes forward this year.

Commissioner Tynan stated she works in Sacramento and is available to meet with CalSTA to provide additional information if needed. Board member Dougherty stated she will take today’s discussion back to CalSTA. She added, she encourages SFBP and industry to keep working with legislative staff to create awareness about the report, advocate, and share information with others besides CalSTA.

Executive Director Garfinkle asked Port Agent Captain Carlier if AB2056 is open for amendment to add the rate setting changes. Port Agent Captain Carlier stated it is a possible vehicle for the rate setting process legislation changes.

Captain McIntyre stated consensus may be difficult to achieve on the items SFBP and Industry are not in agreement on and that she is looking forward to working with Agency to move this legislation forward. She stated she wants to work as quickly as possible to resolve the issue.

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

Captain McIntyre explained although the Port Agent’s report for March shows a slight improvement in vessel traffic, it doesn’t mean a full recovery. She explained deferred costs are still accruing and the supply chain disruptions are anticipated to continue.

Captain McIntyre reminded the Board of the upcoming ILWU contract renewal in July and stated negotiations will begin in May and there is potential for significant disruptions.

Captain McIntyre reiterated the importance of moving the rate setting process changes forward.

15. Presentation and discussion of a request for a disability pension by San Francisco Bar Pilot Captain Roger Kirk – Executive Director Garfinkle.

Presentation and discussion of disability pension request by SFBP Captain Roger Kirk.

Possible Board deliberation and finding on:

A) Whether Captain Kirk is disabled within the meaning of Harbors and Navigation Code section 1164(b). In this context, “disabled” means a disability of permanent or extended and uncertain duration, as determined by the board, on the basis of competent medical opinion.

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B) If the Board determines that Captain Kirk is disabled as defined in section 1164(b), the Board must determine the date that the disability became permanent (or of extended and uncertain duration).

Possible Board action determining whether Captain Kirk is disabled within the meaning of Harbors and Navigation Code section 1164(b), and the date that the disability became of a permanent or extended and uncertain duration. The Board may go into Closed Session to discuss Captain Kirk’s confidential medical reports as authorized by Harbors and Navigation Code, §1157.1

Executive Director Garfinkle stated he received a letter from Captain Kirk on September 27, 2021, requesting a disability pension from the SFBP. He stated he received a letter from Dr. Kosnik, dated March 23, 2022, regarding whether Captain Kirk is disabled. The Executive Director explained if the Board determines Captain Kirk is disabled then they will also need to determine the date of disability.

Board Counsel Eagan stated in accordance with the Harbors and Navigation Code, the Board shall adjourn into a closed session to discuss protected personal and medical details in order to decide Captain Kirk’s request for a disability pension.

The Board skipped to Agenda Items #17, #18, and #19 prior to adjourning into a closed session at 11:42 a.m.

After meeting in closed session, the Board announced they decided to approve the disability pension for Captain Kirk and the date of disability was determined to be January 29, 2021.

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).**

President Hayes-White left the Board meeting at 11:04 a.m. Vice President Schmid is an Incident Review Committee member and must recuse herself from the vote on this item, and Commissioner Prada is unable to vote via telephone, therefore, due to the lack of a quorum, this agenda item was continued until the May Board meeting.

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17. Discussion of whether Board meetings should remain virtual or return to in-person format (President Hayes-White).

Commissioner Tynan inquired about providing a remote call-in option for the next meeting. The Executive Director Garfinkle stated we will have a conference line available for the May Board meeting.

Commissioner Carr inquired if the Board is open to viewing Board meeting documents online to reduce the volume of paper the Board staff produces for the physical binders. Executive Director Garfinkle recommended each Commissioner determine their own preference for accessing the documents.

Administrative Assistant Wong will conduct a poll via email to gather the Commissioners preferences prior to the next Board meeting.

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

Commissioner Nyborg attended an event for Captain McIntyre who received a lifetime achievement award. He stated SFBP appreciates all her hard work. Vice President Schmid congratulated Captain McIntyre.

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

Commissioner Nyborg proposed to continue agenda items #12, #14, and #16. Commissioner Carr proposed to continue agenda item #13.

20. Adjournment.

The meeting adjourned at 12:05 p.m.

Submitted by:



Allen Garfinkle
Executive Director