

<b>Meeting Date:</b>  <b>June 23, 2022</b>	<b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b>  <b>BOARD MEETING MINUTES</b>	<b>Page 1 of 17</b>
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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  
Captain Oscar Prada, Tanker Company Industry Member  
Stephanie Dougherty, Designee of the Secretary of the California State Transportation Agency (CalSTA); arrived at 9:46 a.m., in the middle of agenda item 5.

### **Board Members Absent**

Karen Tynan, Public Member (Called into meeting; restricted to listening, and not able to participate or vote)  
Vacant, Dry Cargo Industry Member

### **Board Staff Present**

Allen Garfinkle, Executive Director  
Dennis Eagan, Board Counsel  
Jennifer Barton, Assistant Director  
Alethea Wong, Staff Services Manager I

### **Public Present (in person)**

Captain John Carlier, San Francisco Bar Pilots (SFBP) President and Port Agent; Captain Anne McIntyre, SFBP Business Director; Captain Eric Robinson, SFBP; Roma Cristia-Plant; and Captain James Barton.

### **Public Present (via telephone)**

Mike Jacob, Pacific Merchant Shipping Association (PMSA) Vice President and General Counsel

## **OPEN MEETING AGENDA**

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

President Hayes-White called the meeting to order at 9:30 a.m. Staff Services Manager I Wong called the roll and confirmed a quorum.

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

#### **Board action to approve the minutes from the Board meeting held on May 26, 2022.**

Board members were presented with the draft minutes from May 26, 2022. Commissioners Carr and Nyborg requested minor edits to the minutes. There was no further discussion.

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**MOTION:** Commissioner Nyborg moved to approve the draft minutes of the meeting held on May 26, 2022, as amended. Vice President Schmid seconded the motion.

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

ABSTAIN: Hayes-White.

**ACTION:** The motion was approved.

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

Mr. Jacob announced his presence through the teleconference line and thanked the Board for allowing the public to attend remotely. He added that he is prepared to comment on agenda items 12, 13, and 14.

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

President Hayes-White thanked Vice President Schmid for chairing the last Board meeting since she was unable to attend in person.

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

Vice President Schmid reported that she attended an exam simulation session where she observed three applicants. She thanked everyone involved for their contribution to the 2022 Pilot Trainee Training Program Selection Examination. Commissioner Nyborg thanked Vice President Schmid for attending to observe the 2022 Pilot Trainee Training Program Selection Examination process.

Ms. Dougherty arrived at 9:46 a.m.

Commissioner Carr reported that he, Commissioner Prada and Vice President Schmid met with the California Department of Human Resources (CalHR) to discuss the interview process and will continue the meeting at a later time.

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

#### **A) Correspondence and activities since the Board meeting held on May 26, 2022.**

Executive Director Garfinkle reported on the following:

- On May 26, 2022, Board staff received an email from Commissioner Carr, requesting that a letter be drafted to the Governor on the status of the Ad Hoc Committee to

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Review the Pilotage Rate Setting Process’ report submission, and emphasized that the Board feels there is an urgent need for the rate process to be reformed during this legislative session.

- On May 27, 2022, he received an email from Commissioner Nyborg stating that ARTELIA was not currently holding a reservation for a fall manned model class, and the only slot available was August 29 to September 2, 2022. He responded that he did not have confidence that Board staff could complete the contracting process in time to fulfill commitments to ARTELIA if that date were to be scheduled. He contacted ARTELIA and explained the contracting situation and asked them if they could please hold the date, with the understanding that the Board may not have a contract in place by then. ARTELIA agreed. He thanked Commissioner Nyborg for his role in moving this forward.
- On May 31, 2022, he inquired of CalPIA about the progress of printing the charts to be used in the 2022 Pilot Trainee Training Program Selection Examination. Board staff had received a quote from CALPIA on April 19, 2022, and ordered fifty charts to be printed at a total cost of \$150. On May 5, 2022, he delivered a sample of the chart to CALPIA’s office in Folsom to make sure it was duplicated correctly. On June 1, 2022, he was informed by Dennette Kreissel, a product management specialist with CALPIA, that the print job was not started due to a lack of a purchase order, and they could not perform the work in time for the exam. She then requested that I submit a waiver for their approval, so Board staff could go out to a commercial printer to have the work done timely. Board staff completed this, and had the work done locally by FedEx, with the charts in hand by June 3, 2022.
- On June 2, 2022, he attended a Selection Appeal Committee meeting held at the main public library in Walnut Creek.
- On June 4, 2022, he received a call from Commissioner Carr regarding his previous request to draft a letter to the Governor, and that the letter should be given a higher priority due to his understanding that stakeholders were meeting with the Governor in the coming week.
- On June 6, 2022, the Board commenced the 2022 Selection Exam by hosting the written exam, with 38 candidates qualifying and 37 sitting for the exam.
- On June 7, 2022, he notified the 27 candidates who passed the written exam that they qualified to participate in the simulator exam. The written test contained 150 questions. The cut score, determined by a modified-Angoff session, was set at 107, and the highest score was 135.
- Also on June 7, 2022, he exchanged emails with Commissioner Carr concerning the letter to the Governor, with the letter that was drafted going through an extensive editing process. He subsequently had concerns about the propriety of the Executive Director speaking for the Board based on this request, and sought advice of Board Counsel Eagan. Based on that advice, the drafted letter was provided to all commissioners. He received some feedback from commissioners and continued to edit the letter, although not completely comfortable that there was a clear consensus

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from the Board on the content of the letter. On June 8, 2022, he received a formal request from Commissioner Carr to send the letter as previously drafted. He reiterated his discomfort about sending a letter to the Governor purporting to speak on behalf of the Board, without the contents of the letter being formally adopted by the Board. Subsequently, due to the demands of the exam process, and following consultation with Board Counsel on June 9, 2022, he decided not to send the letter as drafted. He was never able to ascertain whether stakeholders had met with the Governor that week or not.

- On June 8, 2022, the 27 candidates taking the simulator portion of the exam gathered at the California State University Maritime Academy (CMA) for an orientation to the simulator exam. The candidates were given a packet of exam-related materials to take home and study, given a tour of the simulator, and shown a dry-run of the 27-minute simulation that did not include the conditions related to the challenges they would face, such as current and vessel traffic. Also, on June 8, 2022, the evaluators not familiar with the simulation viewed several simulations to familiarize themselves with the evaluation criteria and simulation.
- On Thursday, June 9, 14 candidates took the simulator exam.
- On Friday, June 10, 13 candidates took the simulator exam. Following the completion of the simulator testing, 12 subject matter experts (SME) familiar with the evaluation criteria, including all six evaluators, participated in an Angoff session to determine the simulator cut score. During this session, each of the 12 SME's were asked independently to assign a level of difficulty corresponding to what a minimally qualified pilot candidate would be expected to do on each of the 60 challenges used to score the simulator exam. These were then amalgamated into a cut score for the exam. In this session, this exercise resulted in a cut-score of 55 out of 120 points available. When applied to the final scores of each candidate, 9 of the 27, or 30% of the test takers, passed the exam. With 120 points available, the highest score was 79.0, and the lowest passing score was 59.33, with a 5.99 point gap between the lowest passing score and the next lower score below 55. He would like to thank the entire Pilot Evaluation Committee (PEC) members, who put in hundreds of hours honing the exam; the four outside evaluators, Captains Mociun, Carson, Morrison, and Moran; Veronica Boe from CMA; and Captain Dave Gates, retired SFBP pilot. The entire team put in 14- and 15-hour days on June 9 and June 10, 2022, respectively, spending breakfast, lunch, and dinner at CMA each day without complaint! And lastly, he wants to thank CalHR for their work throughout to keep the exam on track and make it a success. By regulation, appeals to the simulator portion of the exam will be accepted until July 11, 2022.
- Also, on June 10, Board staff sent a letter to the Department of Finance requesting permission to raise the Board Operations Surcharge to 6% of all pilotage fees.
- On June 13, 2022, Board staff received a Public Records Act request from PMSA Vice President and General Counsel, Mike Jacob, requesting multiple memoranda drafted by Board Counsel Eagan to the Board, including those dated March 21, 2022,

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and April 14, 2022, concerning the conflict of interest issue regarding the Assistant Director.

- On June 14, 2022, Board staff received a letter from the Department of Finance giving Board staff permission to increase the Board Operations surcharge to 6% of all pilotage fees.
- On June 15, 2022, he attended a PEC meeting.
- On June 16, 2022, he emailed all candidates, notifying them of their performance on the simulator exam. These letters were accompanied by phone communications.
- On June 17, 2022, he received feedback from a candidate that was unsuccessful in the simulator exam.
- Also, on June 17, 2022, Board staff received the first appeal regarding the simulator exam. Candidates have until July 11, 2022, to appeal.
- On June 20, 2022, he received the second appeal regarding the simulator exam.
- Also, on June 20, 2022, he attended a Director's meeting at CalSTA.

#### **B) Report on pilot licensing matters since the Board meeting held on May 26, 2022.**

Executive Director Garfinkle reported that since the May Board meeting, the Board renewed the licenses of Captains Wehr, Cvitanovic, Fawcett, Carr, Manes, D'Aloisio, Larwood, Long, and Nyborg.

#### **C) Report on Board surcharges.**

Executive Director Garfinkle reported that the Board received a check from SFBP for surcharges collected in May 2022 in the amount of \$274,919.35, itemized as follows:

- Board Operations Surcharge: \$158,182.71
- Trainee Surcharge: \$ 29,605.85
- Continuing Education Surcharge: \$ 87,130.79

#### **D) Report of Pension Fiduciary.**

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

- As of May 1, 2022, there are currently 84 pensioners, and one disability pension pending.
- The pension surcharge rate has been set for the second quarter of 2022 at \$0.05535, based on a 12-month tonnage lookback period from January 2021 through December 2021.
- The surcharge rate for May was \$0.05535, and the tonnage for May was 22,721,218, resulting in collections totaling \$1,257,619.40, on a target of \$1,147,180.36, resulting

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in a variance of \$110,251.93 over target (compared to the April 2022 variance of \$111,251.93 over target).

- The administrative costs for the month totaled \$2,150.10, resulting in a total distribution of \$1,255,469.30 for May.
- The last COLA increase to the pension was April 1, 2020.

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

Executive Director Garfinkle stated that he received a Lessons Learned report from Captain Aune, in response to the Board order in the HYUNDAI NEPTUNE incident. Captain Aune reported that he presented the report to the San Francisco Bar Pilots at a monthly meeting on May 11, 2022.

**F) Report on legislative activities and contractual matters.**

Assistant Director Barton reported on the following 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.

*Per the Author, "This bill authorizes the BOPC to adjust the pilot boat surcharge to include the costs associated with the acquisition of new pilot boats or repowering existing boats in order to meet CARB emissions requirements."*

Bill Status as of June 22, 2022: On May 17, 2022, the Assembly Bill moved to the Senate. On June 1, the proposed bill was substantively amended as follows:

1. It would require the moneys charged and collected each month from the pilot boat surcharge to be paid to the BOPC Special Fund and used only to fund the pilot boat costs of obtaining new pilot boats and of funding design and engineering modifications for the purposes of extending the service life of existing pilot boats, excluding costs for repair of maintenance. By increasing the amount of moneys deposited into a continuously appropriated fund, the bill would make an appropriation.
2. Repeals Section 1190.2
3. Amends Sections 1190.1 and 1190.5
4. Adds Sections 1194 and 1194.1

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On June 15, 2022, the bill was referred to the Committee on Appropriations and that is where it is at now. The amended proposed bill, if passed in the Senate, will go back to the Assembly for Concurrence.

Board staff will begin drafting the Enrolled Bill Report in anticipation of the bill making it to the Governor's desk.

Assistant Director Barton reported the following on contractual matters:

New/Renewing:

- UC Regents University of California San Francisco (UCSF) Pilot/Trainee Medical Assessments: CHP sent the agreement to UCSF for signing on May 20<sup>th</sup>. The contract is still under review with UCSF (*Dr. Kosnik, the Medical Review Officer*). *Dr. Harrison is the examining physician and secondary medical review officer, . Division of Occupational & Environmental Medicine.* (Estimated Completion Date is July 31, 2022)
- Manned Model Training Services: Following legal counsel's advice, we have come to an agreement with ARTELIA on the contract language pertaining to insurance requirements. We maintained the language that is in the existing contract, except for one paragraph, which we agreed to delete per Artelia's request.

Board staff has submitted an Issue Memo request to Agency to obtain their approval of the Non-Competitively Bid (NCB) Contract Justification. The contract is under final review by both ARTELIA and Board staff. Once Agency approves the NCB Justification, the next step is to obtain Department of General Services approval, which takes approximately 30 days. (Estimated Completion Date is July 31, 2022)

1. Agree to their proposal to drop paragraph 5.A.9) from Exhibit D. They agreed to this in the existing contract, but we're willing to drop it.
  - a. *Insurance provisions may be amended at the approval and discretion of Department of General Services Office of Risk Insurance Management.*
2. Decline to delete paragraph 5.B.1) from Exhibit D, which provides for commercial general liability insurance. They agreed to this in the existing contract, and such a provision is standard in such contracts. This should stay in.
  - a. *Commercial General Liability – Contractor shall maintain general liability on an occurrence from with limits not less than \$1,000,000 in U.S. Dollars per occurrence for bodily injury and property damage liability combined with a \$2,000,000 in U.S. Dollars annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent Contractors, products, completed operations, personal & advertising injury,*

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*and liability assumed under an insured Agreement. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability.*

*The policy must name the State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under the Agreement.*

3. Decline to add a new provision, which would limit the “global” liability of ARTELIA to the contract price and exclude recovery of all indirect and consequential damages.
  - a. *The global liability of the Contractor under the Agreement shall be limited 100 % of the total value of the Agreement, which shall be the sole and exclusive remedy by the BOPC. All indirect and consequential damages shall be excluded.*
- Trainee Drug Testing: The contract has been drafted and is under final review before sending to the provider for their signature. (Estimated Completion Date is July 15, 2022)
- California State University Maritime Academy (CMA)/Pilot Trainee Training Program: Training Program simulator examination development, and administration. On April 26<sup>th</sup>, the contract process was placed on hold until we can determine when we will need CMA's services for developing the next exam. This contract period was scheduled to begin July 1, 2022, however, as the next exam is happening in June 2022, Board staff may not need these services until FY 23/24. Board staff confirmed with CHP's Budget Analyst that the contract can wait until the year of the next development and for the ease of accounting, the total contract can be encumbered in the year of the exam when the invoices come in. (On hold.)
- X-Number Service Orders for the Exam Evaluators: CHP has issued four X Number Service Orders for four exam evaluators. Two of the evaluators are in-state and the other two are out-of-state. Their experience and locality meet the HNC Regulation Section 213(i)(1) requirements (One state licensed pilot from another jurisdiction and one who is an industry representative with current or prior command on deep draft vessels). (Completed)
  - Deep draft vessels – Chriss Carson and Tony Mociun (Daily rate = \$1,000/ Max = \$4,000)
  - Another jurisdiction – Colleen Moran and Wendy Morrison (Daily rate = \$1,300/ Max = \$5,200)

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- State Controller's Office: Board staff has submitted a contract amendment request to CHP to amend the Contract with the State Controller's Office, which performs the Schedule of Agreed-Upon Procedures over all surcharges. The amendment adds the Pilot Dispatch System and Pilot Boat Maintenance Surcharges, which became effective on September 16, 2021. The additional work increases the contract amount by \$11,320 (52 hours) for the remaining two fiscal years. (Estimated Completion Date is July 15, 2022)

Commissioner Nyborg thanked Board staff for their efforts and asked if the sole-source process is normally this challenging. Assistant Director Barton said that was the process, and if there were disagreements with the contract language, the process needs to restart.

Commissioner Nyborg commented that the cost of plane tickets is increasing and asked Board staff if having three manned model training classes in 2023 would be possible.

Executive Director Garfinkle does not expect DGS to move through the approval process quickly and having three classes in 2023 would be a challenge since the contract specifies two classes per year. He added that it is possible for DGS to reject the contract, and Board staff will need to move through a bid process, which is a longer process. He thanked ARTELIA for reserving the fall date for SFBP.

Assistant Director Barton clarified that AB 2056 will require Board staff to approve the invoices, which will require CHP to process the invoices for payment. Audits will also be completed to ensure that the process is done correctly. Executive Director Garfinkle commented that there is a significant change with the process when processing the Pilot Boat reimbursement since SFBP used to track and provide the invoices to Board staff to approve, but the workload will now go to Board staff, who are not involved in the build process. This will require a more in-depth audit. He added that CHP was concerned about having SCO audit the two new surcharges, and questioned whether the Board staff has the authority to make the change. He thanked Assistant Director Barton for researching the issue, and finding that authority. It originated when the Board, relying on the 2009 Bureau of State Audits (currently the California State Auditor's Office) audit of the Board critical of the Board for not auditing a surcharge, voted to authorize having all surcharges audited.

Commissioner Carr was concerned about the PLYMOUTH mooring at Pier 9 and if the ship's presence will disrupt SFBP's work or pilots' rest. SFBP Business Director Captain McIntyre reported that SFBP is aware of the issues and they have been addressed.

Executive Director Garfinkle reported that the 2022 Pilot Trainee Training Program Selection Examination was a challenge and that the simulation exam was particularly

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challenging since it was a new geographic area. He added that the information on the Electronic Chart Display and Information System (ECDIS) chart was listed in meters and not feet. He noted that the pass rate, though low, was not out of range. He added that the Angoff session utilized 12 subject matter experts to review the evaluation criteria, and each person independently weighed the level of difficulty of each criteria.

Assistant Director Barton reported that the job posting for the vacant Administrative Assistant II position was posted and closed on June 18, 2022, and she's able to access the applicants' information to start the interview process.

Commissioner Nyborg commented that since SFBP has four pilot boats to replace, and the replacement process is done one at a time, he finds it is appropriate for Board staff to do the work and agreed that it increases the workload.

During public comment, Ms. Cristia-Plant commented that AB 2056 is efficient and that CHP will do the fiscal management, but she was concerned with the Board's ability to handle and continue to monitor the large amount of money over long periods of years.

Executive Director Garfinkle responded to the Vice President's suggestion about the possibility of hiring more Board staff that a change to the number of Board staff (and the budget) require the Legislature's approval, which is a challenge.

Ms. Dougherty thanked Board staff for mentioning their concerns and welcomes more discussion to resolve any additional issues.

Mr. Jacob commented that PMSA welcomes additional discussion that is needed, and noted that AB 2056 is not intended to affect Board staff's abilities. If Board staff have additional concerns, he suggested to bring their concerns through communications with CalSTA.

## **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 Lowe – January 27, 2022. FFD on May 26, 2022.
- Captain Rocci – March 28, 2022

Port Agent Carlier reported that the SFBP continually monitors the dispatch list for possible 12-hour minimum rest period (MRP) exceptions. For any potential exception

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that is likely to result in a rest period of less than 10 hours, SFBP will ensure that mitigating measures are enacted. He reported that mitigating measures include, but are not limited to, suspending continuing professional development protocols, canceling scheduled meetings, canceling previously granted compensated time off requests, suspending SFBP internal working rules, and calling in off-watch pilots.

He reported that there are currently 50 licensed pilots. In May, there were 15 MRP exceptions, with the shortest rest period being 10.2 hours.

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

For the month of May, Port Agent Carlier reported normal operations for P/V CALIFORNIA, P/V DRAKE, and P/V SAN FRANCISCO. P/V GOLDEN GATE was offline from May 9, 2022, to May 12, 2022, to replace the fuel manifold. P/V PITTSBURG is still laid up, and has been since March 9, 2022.

Bill vessel moves for May 2022 were as follows:

- Bar Crossings: 434 moves
- Bay Moves: 119 moves
- River Moves: 60 moves
- Total Moves: 613 moves
- Gross Registered Tons (GRT): 22.7 million

He also reported that when comparing 2022 year-to-date vessel move data with the same period in 2021, total moves were down 4.9% and GRT was down 7.2%.

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

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

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

**A) Report on the Pilot Evaluation Committee (PEC) meeting held on June 15, 2022.**

PEC Committee Chair Captain Robinson reported on the following:

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- The PEC met on June 15, 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.
- All PEC members, outside evaluators, CalHR personnel, CMA staff, Executive Director Garfinkle, and Captain Gates helped conduct the simulator exam at CMA on June 8 – June 10, 2022. The 2022 Pilot Trainee Training Program Selection Examination was a challenge, and the PEC agreed it produced a quality list of pilot trainee candidates. He thanked everyone for their hard work and willingness to put in long hours for the 2022 Pilot Trainee Training Program Selection Examination. The interview portion of the exam is pending before the final list goes to the Board for approval.
- 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 eight trainees: Captains Adams, Barnum, Burns, Meyer, Olmsted, Pascucci, Sappington, and Snapp. The trainees' range of time in the program is from 2 months to 32 months.
- Captains Adams, Olmsted, Barnum, and Snapp received their First-Class pilotage endorsements for unlimited tonnage on San Francisco Bay by the U.S. Coast Guard, and they are handling in all areas.
- Captain Burns, Meyer, Pascucci, and Sappington are acquiring route trips and handling or part handling vessels in all areas.
- Captain Adams is still on probation and continues to work on consistency in his piloting.
- Most of the trainees are meeting the recommended benchmarks and are progressing at their own rate.
- The next PEC meeting is scheduled for July 20, 2022, at 7:30 a.m. at the Board office.

**B) Possible PEC recommendation to place one or more Pilot Trainee Training Program trainees on probation, or dismiss one or more trainees from the program. Possible Board action to place one or more Pilot Trainee Training Program trainees on or off probation, or dismiss one or more trainees from the program.**

There was no recommendation.

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

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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.)**

**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 July 28, 2022.**

Executive Director Garfinkle reported that the 90-day statutory deadline occurred in July 2021. He stated that the incident report is not completed yet and the delay is due to staff workload. The IRC requests an extension to the Board meeting to be held on July 28, 2022. There is no danger to public safety due to the delay in presenting the report.

**MOTION:** Commissioner Prada moved that the Board grant an extension to the Incident Review Committee to present its report on the M/V GLOBE PEGASUS at the Board meeting to be held on July 28, 2022.

Commissioner Nyborg seconded the motion.

**VOTE:** YES: Hayes-White, Schmid, Carr, Nyborg, Prada.

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved.

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# **11. Significant Port Safety and Security Cases Report (Executive Director Garfinkle)**

**Report on marine casualties, navigational safety, and significant incident management cases relevant to the Board as reported by the U.S. Coast Guard in its Prevention / Response – San Francisco Harbor Safety Statistics report.**

Executive Director Garfinkle reported that there were 4 loss of propulsion incidents. One of the incidents was significant as the U.S. flagged school ship was outbound in the San Francisco Bay near Angel Island on May 20, 2022. The vessel immediately dropped anchor and was later escorted to Anchorage 7 by a tug. The explanation of the propulsion failure was that the port main diesel engine shut down due to loss of control air pressure. The vessel conducted repairs while at anchorage and U.S. Coast Guard witnessed satisfactory operation of the system. The case was closed.

President Hayes-White called for a 10-minute break at 10:43 a.m.

President Hayes-White reconvened the meeting at 10:57 a.m.

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

Executive Director Garfinkle confirmed for President Hayes-White that this agenda item has been on the agenda three times already. Board members have reviewed notes and Port Agent Carlier’s letter. Board members were concerned about a potential conflict of interest. Board members were notified at previous Board meetings that CalSTA followed appropriate protocols during the hiring process, and that the Board doesn’t hire or terminate the Assistant Director’s position. President Hayes-White agreed that there seems to be a legitimate concern and requests that the Board have more discussion regarding the conflict of interest.

Executive Director Garfinkle had already discussed the matter with Board Counsel Eagan and CalSTA. He reported that Board staff received a Public Records Act (PRA) request from PMSA regarding documents related to this matter.

Board Counsel Eagan suggested that the Board can have a general discussion regarding the conflict of interest. He also suggested that the Board may choose to waive the attorney-client privilege for the two memos he drafted dated March 21, 2022, and April 14, 2022. He added that the PRA expands the issue, and that if the Board chooses to waive the attorney-client privilege, PMSA will get a copy of his two memos, including any other correspondence within the scope of PMSA’s request. He added that if the Board fails to act or acts

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improperly, the PRA requester has the right to enforce the act, and if needed, the requester may sue the Board if it doesn't get what they believe they are entitled to. He further stated, that based on existing facts, it was not appropriate to have a closed session, except for discussing pending litigation. With the PRA request, he suggested that there is significant exposure, and he recommends the Board consider the waiver, and go into closed session.

Vice President Schmid and Commissioner Nyborg agreed and requested that Board members go into closed session. Commissioner Carr was disappointed that Commissioner Tynan is unable to participate, since she has a legal background. President Hayes-White reported that she had spoken with Commissioner Tynan the day before and can share with her the closed session conversation. Commissioner Tynan had already logged off the call and did not listen in on the closed session or the remainder of the open session.

Mr. Jacob thanked the Board for putting its effort in continuing the discussion during closed session, and he added that, preferably, a notice should be included when Board members have an agenda item that may require a closed session.

Board Counsel Eagan clarified that the Bagley-Keene Act is flexible with the closed session, so long as the topic is an agenda item, that the closed sessions are often listed, but it is not required to be listed on the agenda.

During public comment, Board licensee Captain Kasper, commented that he felt that the Board was concerned about the perception of conflict of interest, but seems selective in identifying when one exists, since some Board members are current or former Chevron employees, and/or have a financial interest in Chevron which includes, but are not limited to stocks. There was no additional discussion.

**CLOSED SESSION BEGAN:** 11:17 a.m.

**OPEN SESSION RESUMED:** 1:00 p.m.

Board Counsel Eagan reported that the Board decided to waive its attorney-client privilege with respect to the Assistant Director Conflict of Interest memos, as well as other email advice by Board Counsel that is within the scope of the PRA request, and these will be made available to PMSA.

President Hayes-White reported that the July 2022 Board meeting will be the last meeting agenda item 12 will be on, and she will draft a letter to CalSTA about the hiring process for the Assistant Director's position.

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

Committee Chair Captain Carr reported that Commissioner Tynan met with CalSTA regarding the Ad Hoc Committee to Review the Pilotage Rate Setting Process initiative.

Ms. Dougherty reported that the Committee members shared helpful clarifications that included the background and context regarding the pilotage rate setting matter.

Committee Chair Captain Carr thanked Executive Director Garfinkle for his concern about the content of the requested letter to the Governor. He suggested to keep the letter simple by inquiring about the status of the report, and to request feedback.

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

SFBP Business Director Captain McIntyre reported that stakeholders continue to meet regarding the pilots' emergency funding, and will update the Board on the status. She added that SFBP, PMSA, Western States Petroleum Association (WSPA), and Cruise Lines International Association (CLIA) have been having productive meetings. She reported that Mr. Jacob had another engagement scheduled and had to end the call, but she provided a brief update that shipping activity continues to be down by 28.5% from pre-pandemic volume. There is no new development. She added that the International Longshoremen's Association resumed their meetings, and the vessel turnaround time in Oakland is slow with labor and equipment constraints.

**15. Incident Review Committee report on the M/V GLOBE PEGASUS allision with several pilings at Levin Terminal in Richmond, CA on April 8, 2021. (Executive Director Garfinkle/Vice President Schmid)**

**A presentation of the Incident Review Committee report on M/V GLOBE PEGASUS allision with several pilings at Levin Terminal in Richmond, CA on April 8, 2021. Board deliberation of the Incident Review Committee's recommendations to the Board and determination regarding the event involving the M/V GLOBE PEGASUS allision with several pilings at Levin Terminal in Richmond, CA on April 8, 2021. The Board may go into closed session for the deliberation of the incident report presented under**

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**this item pursuant to Harbors and Navigation Code §1180.6(a) and Government Code §11126(c)(3) and (e)(1).**

This agenda item was already discussed during agenda item 10.

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

Commissioner Carr reported that one of the pilots was enroute to an assignment in Martinez and had parked his car there. When the Golden State Warriors won the game, CHP closed all the exits into San Francisco, and the pilot was unable to get off the freeway into San Francisco. The pilot asked the CHP officer to let him off, but CHP treated him roughly. The pilot was able to speak with a Lieutenant and will let the Harbor Safety Committee know. Commissioner Carr added that the assignment the pilot was heading to was for a loaded tanker. Since Board staff works with CHP, Commissioner Carr requested that Board staff discuss with CHP the importance of a pilot reporting to their assignment.

President Hayes-White requested that the incident be documented as an example of the importance of the pilot's work and impact on safety.

Executive Director Garfinkle requested that the Port Agent draft the letter on the risk of not having a pilot on the ship at the appropriate time.

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

There were no recommendations.

**18. Adjournment.**

**MOTION:** Commissioner Prada moved to adjourn the meeting. Vice President Schmid seconded the motion.

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

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved, and the meeting was adjourned at 1:16 p.m.

Submitted by:



**Allen Garfinkle**  
**Executive Director**