

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on July 14, 2016
Sacramento, California**

PRESENT:

Art Carter, Chair
Ed Lowry, Member
Judith Freyman, Member
Han Ha, Executive Officer
Jeff Mojcher, Chief Counsel
Neil Robinson, Presiding Administrative Law Judge
Ursula Clemons, Presiding Administrative Law Judge
Autumn Gonzalez, Industrial Relations Counsel
Aaron Jackson, Industrial Relations Counsel
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician
Andia Farzaneh, Graduate Student Assistant
Megan Lane, Consultant, Senate Office of Research

MINUTES OF June 30, 2016 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the June 30, 2016 Board meeting as amended. Member Freyman seconded. The Board voted to approve the draft minutes of the June 30, 2016 Board meeting as amended.

NEW BUSINESS:

(The Appeals Board hears and discusses new reports presented by staff.)

ACTION: No report.

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

ACTION: Executive Officer Ha reported that the new phone system, VOIP, has arrived and all preparation for installation is complete.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board)

ACTION: No report.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: No report.

BOARD MEMBERS' REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: Member Lowry reported that he will be unavailable for the July 28, 2016 Board meeting.
Member Freyman reported that she will be unavailable for the August 11, 2016 Board meeting.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

OPERATIONS UPDATE:

ACTION: No report.

STAFF REPORTS:

(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

OASIS PROJECT:

ACTION: Judge Robinson reported that there have been two hands-on training sessions in West Covina on scanning and scheduling within OASIS. He also reported that the data migration is ready to be tested which will soon begin. And the interface with accounting is on track and they will soon be testing two of the four areas needed. Judge Robinson also reported that the new date to go live with OASIS is September 27, 2016 and there is an agreement with the project team that there will be no further delays.

LITIGATION UPDATE:

ACTION: Chief Counsel Mojcher reported on the status of current court cases.

REGULATIONS:

ACTION: The Board's Practice and Procedure rulemaking package is currently at OAL awaiting review.

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

PUBLIC COMMENT:

(Public comment will be entertained during discussion of each agenda item of the Open Meeting.)

ACTION: Megan Lane, Consultant from the Senate Research Office, introduced herself. She then asked for clarification on terms used in the meeting.

The Board recessed to its closed session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

HOME DEPOT U.S.A., INC. DBA HOME DEPOT #6683, 15-R3D3-4516
THROUGH 4518

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

MOORE'S PUMPKINS AND CHRISTMAS TREES, 15-R1D4-1504

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

W. A. RASIC CONSTRUCTION COMPANY, INC., 13-R4D4-1422

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

KEY ENERGY SERVICES, INC., 15-R4D7-0255 & 0256

ACTION: Member Lowry moved that the Board vote to grant this Petition for Reconsideration. Member Freyman seconded. The Board voted to grant this Petition for Reconsideration.

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

AVALON BAY COMMUNICATIONS, INC., 15-R3D2-0751

ACTION: Member Lowry moved that the Board vote to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to deny this Petition for Reconsideration.

ORDERS DISMISSING APPEAL:

JOSE LUIS GALLINDO JR. DBA ABSOLUTE AUTO BODY, 15-R6D5-3672
AND 3673

ACTION: Member Lowry moved that the Board approve this Order Dismissing Appeal from Administrative Law Judges. Member Freyman seconded. The Board voted to approve this Order Dismissing Appeal from an Administrative Law Judge.

ORDER DENYING LEAVE TO FILE LATE APPEAL

CONSTRUCTURE, INC., 16-R3D3-9089

ACTION: Member Lowry moved that the Board rescind the Order Denying Late Appeal and reinstate the appeal for Constructure, Inc. Member Freyman seconded. The Board voted to rescind the Order Denying Late Appeal and reinstate the appeal for Constructure, Inc.

INTERNATIONAL DBA MOD SHOP, 16-R3D5-9090

ACTION: Member Freyman moved that the Board approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge. Member Lowry seconded. The Board voted to approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge

MATTERS HELD OVER FROM PREVIOUS MEETINGS:

(If the Board is unable to conclude its deliberations and/or if any matter(s) is (are) put over from a previous meeting, they will be further discussed.)

MATTERS PENDING RECONSIDERATION:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

A TO Z TREE NURSERY, INC. dba A TO Z SPECIMEN TREE MOVERS,
15-R6D1- 2277 though 2279

ATKINSON CONSTRUCTION, LP, 14-R3D1-4111

BARRETT BUSINESS SERVICES, INC., 12-R3D1-1204 THROUGH 1206

BIGGE CRANE & RIGGING CO., 14-R1D2-1798
CALSTRIP STEEL CORPORATION, 12-R3D6-1998 & 1999

COAST WASTE MGNMT OF CA, INC., 11-R3D2-2385 & 2386
ACTION: Board discussed this matter.

COMPASS CONTAINER GROUP, INC., 16-R1D4-9014
CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364
DAVEY TREE SURGERY CO., 13-R3D3-1018 THROUGH 1021

DYNAMIC CONSTRUCTION SERVICES, INC., 15-R4D1-1471 AND 1472
ACTION: Board discussed this matter.

FEDEX FREIGHT, INC., 14-R2D1-0144
FIRST PRIORITY DESIGN & CONSTRUCTION, 16-R3D5-9073
FOUNDATION BUILDING MATERIALS LLC, 14-R1D2-3533 THROUGH 3535
GATEWAY PACIFIC CONTRACTORS, INC., 10-R2D3-1502 THROUGH 1508
GIBRALTAR PARTNERSHIP LP, 15-R3D2-4782 THROUGH 4785
HERMAN WEISSKER, INC., 13-R3D1-3279
JD MILLER CONSTRUCTION, INC. dba M & M FRAMING, 16-R4D4-9058
JM ENVIRONMENTAL, INC., 15-R2D1-9232
KEY ENERGY SERVICES, LLC, 15-R4D7-0255 AND 0256
L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
MAGNA TOOL INC., 15-R3D1-9214
MASTER CARE WINDOW WASHING, 15-R1D4-9230

MORROW-MEADOWS CORP., 12-R4D1-0717 THROUGH 0719
ACTION: Board discussed this matter.

NOLTE SHEET METAL, INC., 14-R6D7-2777 through 2783
RUSSELL FABRICATION CORP. dba AMERICAN FABRICATION, 15-R6D2-90
SHIMMICK CONSTRUCTION CO., INC/OBAYASHI CORP., 11-R3D1-2562
THROUGH 2570
UNITED PARCEL SERVICE, 13-R3D2-2664 and 2665
WALT OXLEY ENTERPRISES INC. dba CIARRA CONSTRUCTION,
16-R1D2-9075

LEGISLATION:

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

1. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
2. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
3. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
4. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
5. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
6. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
7. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
8. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
9. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
10. A.TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
11. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
12. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575 (12-R5D1-337)
13. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
14. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 34-2014-80001749 (2008-R2D1-3414 THROUGH 3418)
15. SHIMMICK-OBAYASHI, 34-2014-80001750 (08-R3D3-5023 THROUGH 5025)
16. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
17. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817 (09-R6D2-2238 ~ 2241)
18. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)
19. BARNARD IMPREGILO HEALY JV, CPF-14-513697 (14-R5D1-9013)

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20. DAVIS DEVELOPMENT CO., 34-2014-80001892 (10-R3D1-3360 THROUGH 3362)
21. KDTD, INC. DBA KD DEVELOPMENT, INC., 37-2015-00003550-CU-WM-CTL (14-R3D2-1935 & 1936)
22. HHS CONSTRUCTION, 34-2015-80002052 (12-R3D2-0492 THROUGH 0497)
23. MARIA DE LOS ANGELES COLUNGA dba MERCED FARM LABOR, 15CV-00945 (08-R2D1-3093 ~ 3098)
24. STANISLAUS FOOD PRODUCTS CO., 34-2015-80002087 (13-R2D4-0572 ~ 0574)
25. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)
26. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP., 34-2015-80002204 (12-R3D1-0781)
27. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
28. NATIONAL DISTRIBUTION CENTERS, LP, 12-R6D2-0391
29. TRI STATE STAFFING, 12-R6D2-0378
30. CHEVRON U.S.A., N15-2013 (13-R6D3-0655 THROUGH 0662)
31. T & R CONSTRUCTION GROUP, BS159712 (14-R4D3-4120 & 4121)
32. ABM FACILITY SERVICES, INC. dba ABM BUILDING VALUE, 30-2016-00831661, 12-R3D6-3496 ~ 3498
33. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851 ~ 3854)
34. SOLARCITY CORP., 14-R3D2-3707, 34-2016-80002345
35. BURTECH PIPELINE, INC., 13-R3D2-0830 and 0831, 37-2016-00013806
36. RAAM CONSTRUCTION, INC., RG16-810863 (15-R1D4-0155)

APPELLATE COURT:

1. XL CONSTRUCTION, C074514, 34-2009-80000300 (08-R1D2-1191 THROUGH 1193)

2. AC TRANSIT, A142799, RG13-687314 (08-R1D4-0135)
3. THYSSENKRUPP ELEVATOR CORPORATION, C077115, 34-2013-80001456
(11-R2D1-2217 ~ 2219)
4. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, C078953, 34-2011
80000965, (10-R6D2-0188 THROUGH 0191)
5. KEY ENERGY SERVICES, INC., F073567, S-1500-CV-283958-LHB

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

24 HR SOLUTIONS PALLETS, INC., 16-R6D5-1877 AND 1878
A & M MARBLE, INC., 16-R3D1-0520 AND 0521
ADVOCACY FOR RESPECT AND CHOICE, 16-R3D5-1789*
ALL AMERICAN WINDOW CLEANING, INC., 11-R3D1-2612 THROUGH 2614
ALWAYS BLUE POOLS, 16-R4D7-0733 THROUGH 0735
AMERICAN TIRE DISTRIBUTORS, INC., 16-R4D7-1708 AND 1709
AMERICAN WALL PANELS, LLC, 16-R3D3-0666 AND 0667*
AMF SUPPORT SERVICES INC., DBA TRIDEN MEDICAL,
13-R3D3-2454 THROUGH 2460
ARCHDIOCESE OF LOS ANGELES DBA ST. CHRISTOPHER
CATHOLIC CHURCH, 15-R4D4-4660
ASSEMBLY AND FITTING SHOE GROUP, INC., 16-R6D2-1541*
A.T.A. PLUMBING & CONSTRUCTION INC., 16-R4D4-0999
AVATAR MACHINE, LLC., 15-R3D1-3996 THROUGH 3998
BLUE CHIP 2000 COMMERCIAL CLEANING, INC., 15-R2D1-3465
BOTTLES & WOOD II LLC DBA BOTTLES & WOOD, 15-R3D2-2720
THROUGH 2722
BRAVO CONCRETE CONSTRUCTION SERVICES, INC., 15-R3D1-4405
KATHRYN JAMI BRUNO DBA JUANITA JUANITA, 16-R6D7-0785 AND 0786
BURRTEC WASTE & RECYCLING SERVICES LLC, 15-R3D3-0419 AND 0420
CARSON TRAILER INC., 16-R6D2-0468 AND 0469
CASE PACIFIC COMPANY, 15-R4D7-4266
CEJA-REYES INC, 16-R2D1-0955 AND 0956
CENTRAL TRANSPORT LLC, 16-R3D3-0890 AND 0891
CHARTWELL STAFFING SOLUTIONS, 16-R4D1-0724 AND 0725*
CONSENSUS ORTHOPEDICS, 16-R2D1-1893
COSTCO WHOLESALE CORPORATION, 15-R4D7-4153 THROUGH 4155
CUT AND STITCH SHOE GROUP, INC., 16-R6D2-1539 AND 1540
DEL MAR PLASTERING, 16-R3D1-0929 THROUGH 0931

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DESERT OASIS CONSTRUCTION INC., 16-R6D5-1690 AND 1691
DESERT RECREATION DISTRICT DBA PAWLEY POOL, 16-R3D3-1763
DISNEYLAND RESORT, 16-R3D1-0433
E & R CONSTRUCTION, INC., 16-R3D1-0802 AND 0803
ELEC NOR BELCO ELECTRIC, INC., 16-R3D3-1706 AND 1707
EURODRIP USA, 16-R2D5-1499
FORD FRAMING COMPANY, INC., 16-R3D1-0611 THROUGH 0614
FOUR SEASONS CONSTRUCTION AND DESIGN INC., 16-R6D5-0827 AND 0828
FRESNO CITY POLICE DEPT, 16-R2D5-0719 AND 0720
GLOBE MARKET INC. DBA FRESH FOODS INTERNATIONAL,
15-R4D7-4262 AND 4263
H. LIMA COMPANY INC., 15-R5D2-4491
INLAND EMPIRE FRAMING INC., 16-R3D1-0589 THROUGH 0593
INTERLINK, INC DBA PRECISION PLASTICS PRINTING CO., 16-R3D1-0033
JAIME PARTNERS, INC. DBA JAIME PARTNERS, 16-R3D2-1756
JON RICHARDS COMPANY INC, 16-R3D3-1669 AND 1670
JOURD CONSTRUCTION COMPANY INC, 16-R3D3-1187 AND 1188
KEHE DISTRIBUTORS, 16-R3D1-0108
LAUSD TERESA P HUGHES ELEMENTARY, 16-R3D5-0448 AND 0449
LB3 ENTERPRISES INC, 16-R3D2-1531*
LDI MECHANICAL, INC., 16-R3D1-0927 AND 0928
LES TREE CARE, INC., 14-R4D3-3949
MANUEL D. & MARIA I. GONZALES, 16-R6D5-1218
MEADOWLARK HARVESTING, INC., 16-R4D7-0692 AND 0693
MEDWAY PLASTICS CORP., 16-R3D5-1793
MID-STATE STEEL ERECTORS, INC., 15-R1D3;4615 THROUGH 4618
MIRAMONTE WINERY DBA ETCHED WINE.COM, 16-R3D3-1667 AND 1668
MORLEY BUILDERS, INC., 15-R4D1-4740
NOBLE MARKETS INC DBA POKERVILLE MARKET 15-R2D4-4634
OASIS MEDICAL, INC., 16-R4D4-1897 THROUGH 1900
OMNICAL, INC., 16-R4D3-0681 THROUGH 0683
ONNIK SHOE CO., INC., 16-R6D2-0736 AND 0737
PACIFIC STEEL GROUP, 16-RD3-1221 THROUGH 1223
PARAMOUNT CITRUS PACKING CO, LLC., 15-R4D7-4264
PARAMOUNT FARMING COMPANY, LLC, 15-R4D7-2442 AND 2443
PARAMOUNT FARMS INTERNATIONAL, LLC., 14-R4D7-4071
PHS/MWA DBA PHS/MWA AVIATION SERVICES, 16-R3D3-0935
PMC, 16-R3D2-1354
POWER DISTRIBUTION, INC., 15-R3D1-4456
Q G PRINTING CORPORATION, 14-R3D3-3369 CONSOLIDATED WITH
14-R3D3-3370*
ROYAL ROOFING CORP., 11-R4D3-1231 THROUGH 1234*
S. A. CAMP PUMP COMPANY, 16-R4D7-0563 THROUGH 0565
S & M CABINETS, INC. 16-R6D5-0473 THROUGH 0477
SEA-LOGIX, LLC DBA SEA-LOGIX, 16-R1D4-1615

SEA TEL INC. DBA COBHAM SATCOM, 16-R1D5-0749
SECURITY PAVING COMPANY INC., 15-R4D3-4482 AND 4483
SHOOK & WALLER CONSTRUCTION, INC., 15-R1D5-4535
CHERYL SKOLNICK & DAVID SKOLNICK, 16-R6D5-1879 THROUGH 1881
STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS
& REHABILITATION, 16-R1D5-1260 THROUGH 1264
STK, INC. DBA BIG PENNY CAR WASH, 16-R3D5-1728
SUPERIOR STONE PRODUCTS, INC., 16-R3D1-0522 THROUGH 0524
TANIMURA & ANTLE, 16-R2D5-0422
TBGA, LLC., 15-R4D4-3212
TEC EQUIPMENT INC., 16-R3D3-1721
THE SHOOTING RANGE, INC. DBA FIRING LINE SHOOTING RANGES,
16-R3D1-1079
TOKAY RECYCLING CENTER, 16-R2D4-0715 AND 0716
TOM BEATTIE, INC. DBA ROYAL ROOFING & CONSTRUCTION CO.,
11-R4D3-1235 THROUGH 1239
USA WASTE OF CALIFORNIA, INC. DBA BLUE BARREL DISPOSAL,
16-R4D3-0732
VALLEY CREST TREE CO. INC. DBA VALLEY CREST TREE COMPANY,
15-R6D2-4064 AND 4065
VINTAGE ROOFING AND SOLAR CO., INC. DBA VINTAGE ROOFING,
15-R3D3-3179
WEST COAST WOOD PRESERVING, LLC., 15-R4D7-4432 THROUGH 4435
WILLIAMS & SONS MASONRY INC., 15-R3D2-3434
WMJ FARMS, INC., 15-R2D5-4393
WORK RIGHT PROPERTY SERVICES, 16-R3D3-0668 THROUGH 0670
YUSEN LOGISTICS, 16-R3D5-1358 AND 1359*
ZUCKERMAN FAMILY FARMS, INC., 15-R2D4-1308 THROUGH 1310

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Member Freyman seconded the motion. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended.

PERSONNEL: ACTION: Board discussed personnel matters.
(Issues regarding staff)

The Closed Session was adjourned at 11:47am and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 11:48am.