

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on February 4, 2016
West Covina, California

PRESENT:

Art Carter, Chair
Ed Lowry, Member
Judith Freyman, Member
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

MINUTES OF JANUARY 21, 2016 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the January 21, 2016 Board meeting as amended. Member Freyman seconded. The Board voted to approve the draft minutes of the January 21, 2016 Board meeting as amended.

NEW BUSINESS:

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

ACTION: Chair Carter will be unavailable for the May 19, 2016 and the June 2, 2016 meetings. Therefore, Chair Carter asked that the June 2, 2016 meeting be moved to June 9, 2016 and the June 16, 2016 meeting be moved to June 23, 2016 to avoid missing two meetings.

OLD BUSINESS:

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

ACTION: No report.

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: Chair Carter, Member Freyman and Judge Robinson will attend the Advisory Council Meeting on February 11, 2016 in Oakland.

BOARD MEMBERS' REPORTS:

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

ACTION: No report.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

OPERATIONS UPDATE

ACTION: A new Senior Legal Typist has been hired for the West Covina office. A law student has been hired to assist the Legal department in Sacramento.

STAFF REPORTS:

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

OASIS PROJECT:

The OASIS team is fine-tuning the details and working on redesigning forms and letters to be used by the Appeals Board. They are working on language to be used on the website and they are target for the March 3rd demonstration for the Board. The public demonstration has been rescheduled for March 17, 2016.

LITIGATION UPDATE:

Aaron Jackson attended a hearing in Orange County that was rescheduled for March.

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: NONE

The Board recessed to its closed session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

SOLARCITY CORP., 14-R3D2-3707

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:

CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 and 3186

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.

CALIFORNIA SECURITY & INVESTIGATIONS ACADEMY dba CSTA,
15-R2D1-9190

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.

JM ENVIRONMENTAL, INC., 15-R2D1-9232

ACTION: Member Lowry moved that the Board vote to issue an Order of Remand in this matter. Member Freyman seconded. The Board voted to issue an Order of Remand in this matter

MAGNA TOOL INC., 15-R3D1-9214

ACTION: Member Lowry moved that the Board vote to issue an Order of Remand in this matter. Member Freyman seconded. The Board voted to issue an Order of Remand in this matter

UNITED PARCEL SERVICE, 13-R3D2-2664 & 2665

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):

ORDERS DISMISSING APPEAL:

FRAMECO CONTRACTING, 15-R4D3-3273 AND 3274
TEMPO INDUSTRIES INC., 15-R6D2-1357 AND 1358

ACTION: Member Lowry moved that the Board approve these Orders Dismissing Appeal from Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders Dismissing Appeal from Administrative Law Judges.

ORDER DENYING LEAVE TO FILE LATE APPEAL

THE NEW SENIOR RESOURCE GROUP, INC., THE VILLAGE AT NORTHRIDGE,
16-R4D3-9001
UNITED ROCK PRODUCTS CORP., 16-R5D2-9000

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

BURTECH PIPELINE, INC., 13-R3D2-0830 AND 0831
The Board discussed this matter.

CALSTRIP STEEL CORPORATION, 12-R3D6-1998 & 1999
CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364

EKEDAL CONCRETE, INC., 13-R3D1-0131 THROUGH 0133
The Board discussed this matter.

HERMAN WEISSKER, INC., 13-R3D1-3279
L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822

McCARTHY BUILDING CO., INC., 12-R1D4-3458
ACTION: Member Lowry moved that the Board vote to approve this draft Decision After Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Decision After Reconsideration for signature.

MCM CONSTRUCTION, INC., 13-R1D2-3851 THROUGH 3854
MDB MANAGEMENT INC., 14-R4D1-2373 AND 2374
OC COMMUNICATIONS, 14-R2D2-0120, 0166 and 0340

SIERRA FOREST PRODUCTS, 09-R2D5-3979
SHIMMICK CONSTRUCTION CO., INC/OBAYASHI CORP., 11-R3D1-2562
THROUGH 2570

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. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
3. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
4. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
5. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
6. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
7. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
8. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
9. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
10. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
11. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
12. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
13. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575 (12-R5D1-337)
14. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)

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15. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR,
34-2014-80001749 (2008-R2D1-3414 THROUGH 3418)
16. SHIMMICK-OBAYASHI, 34-2014-80001750 (08-R3D3-5023 THROUGH 5025)
17. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
18. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817
(09-R6D2-2238 ~ 2241)
19. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)
20. BARNARD IMPREGILO HEALY JV, CPF-14-513697 (14-R5D1-9013)
21. DAVIS DEVELOPMENT CO., 34-2014-80001892 (10-R3D1-3360
THROUGH 3362)
22. FEDEX GROUND PACKAGING SYSTEM, INC., CIVDS1415696 (13-R3D1-1220)
23. KDTD, INC. DBA KD DEVELOPMENT, INC., 37-2015-00003550-CU-WM-CTL
(14-R3D2-1935 & 1936)
24. HHS CONSTRUCTION, 34-2015-80002052 (12-R3D2-0492 THROUGH 0497)
25. MARIA DE LOS ANGELES COLUNGA dba MERCED FARM LABOR,
15CV-00945 (08-R2D1-3093 ~ 3098)
26. STANISLAUS FOOD PRODUCTS CO., 34-2015-80002087 (13-R2D4-0572 ~ 0574)
27. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)
28. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP., 34-2015-80002204
(12-R3D1-0781)
29. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
30. NATIONAL DISTRIBUTION CENTERS, LP, 12-R6D2-0391
31. TRI STATE STAFFING, 12-R6D2-0378
32. CHEVRON U.S.A., N15-2013 (13-R6D3-0655 THROUGH 0662)
33. T & R CONSTRUCTION GROUP, BS159712 (14-R4D3-4120 & 4121)

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)

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.)

ACCESS SYSTEMS & SOLUTIONS, INC. DBA USA SCAFFOLD CO,
15-R1D4-1433 THROUGH 1436
ALBERTSONS, LLC., 15-R4D1-1920 AND 1921
AMADOR FIRE PROTECTION DISTRICT, 15-R2D4-3989
AREF AHMADIA DBA WEST END CAFÉ, 15-R6D7-2071 THROUGH 2073
BCJ SAND & ROCK, INC., 15-R5D1-2663 THROUGH 2665
CURTIS BERESFORD DBA FULL SERVICE SCAFFOLD,
14-R2D1-3127 THROUGH 3130
BLUE APRON INC., 15-R1D5-2766 THROUGH 2768
BRANNON INC. DBA SMITH ELECTRIC SERVICE, 15-R4D3-2093 AND 2094
BURNETT & SONS PLANING MILL AND LUMBER CO.,
15-R6D1-1818 THROUGH 1820
CA CORRECTIONS – CHUKAWALLA STATE PRISON, 14-R3D3-2368
CA CORRECTIONS & REHABILITATION, 15-R4D7-2662
CA DEPT. OF STATE HOSPITALS NAPA STATE HOSPITAL, 15-R1D5-0711
CA DEPT OF STATE HOSPITALS NAPA, 14-R1D5-4144
CALIFORNIA BOX COMPANY, 15-R4D4-2988
DOUGLAS CAMPBELL, 15-R6D7-4394 THROUGH 4397
CAVCO INDUSTRIES DBA FLEETWOOD HOMES, INC.,
15-R3D3-4596 THROUGH 4598
CENTRAL BAY ROOFING AND RESTORATION, 15-R1D4-2635 THROUGH 2637
CHAMELEON PAINTING & DECORATING, 15-R3D1-3559 AND 3560
CHINO AUTOMOTIVE SERVICE, 15-R6D5-4584 AND 4585
CITY OF LONG BEACH POLICE DEPARTMENT, 15-R3D5-2778
CITY OF LONG BEACH POLICE DEPARTMENT, 15-R3D5-2779

CITY OF SACRAMENTO DBA UTILITIES DEPARTMENT, EA
FAIRBAIRN WATER TREATMENT PLANT, 15-R7D1-3022
THROUGH 3026*

CITY OF SANTA MONICA, 14-R4D1-3829

CITY OF WALNUT CREEK RECREATION DIVISION, 15-R1D5-3644

CLARK PACIFIC PRECAST LL; DONALD G CLARK CORP.; AND ROBERT E
CLARP CORP, 15-R1D2-4317

COMCAST CORPORATION, 15-R1D2-2505

COMMERCIAL & INDUSTRIAL ROOFING COMPANY, INC. DBA
COMMERCIAL & INDUSTRIAL ROOFING C/O LIEB & LIEB,
15-R6D5-4039

CUSHFIELD MAINTENANCE WEST CORP, 15-R4D1-1514 AND 1515

DISPENSING DYNAMICS INTERNATIONAL, 15-R4D4-2810 AND 2811

DV CUSTOM FARMING, LLC., 15-R6D5-3674 AND 3675

EJS PIZZA CO DBA ROUND TABLE PIZZA, 15-R2D1-1749*

ESTENSON LOGISTICS, 13-R4D4-3190 THROUGH 3192

FD CONTINUOUS PALLETS, 15-R6D5-3542 AND 3543

FORGED METALS INC. DBA ALCOA FASTENING SYSTEMS & RINGS,
15-R3D3-4711 THROUGH 4714

FRAMECON INCORPORATED DBA TITAN FRAMING, 15-R1D4-0713
AND 0714

FRAZIER MASONRY CORPORATION, 15-R4D3-1001

GHEEN BUILDERS, INC., 15-R2D3-4538

GOAT HILL, INC., 15-R1D1-4631

GUARDIAN NATIONAL, INC. DBA GUARDIAN NATIONAL SECURITY,
14-R4D4-3657

GUNS, FISHING AND OTHER STUFF, LLC, 15-R1D4-2248 THROUGH 2252*

PAULO GUZMAN DBA LMR AUTO REPAIR, 15-R6D7-1179 AND 1180

JAY HARTMAN DBA PROPERTY MANAGEMENT CO, 15-R4D1-1141

J.R. SIMPLOT COMPANY, 15-R7D1-4759 THROUGH 4761

JOHN KAUTZ DBA KAUTZ FARMS, 15-R2D1-0720 THROUGH 0722

KKP, INC., 15-R6D5-0807 AND 0808

LA COUNTY SHERIFF FACILITIES SERVICES BUREAU, 15-R4D1-2838
AND 2839

LA ROCQUE BETTER ROOFS INC., 15-R3D5-3229 AND 3230

LAUSD HARVARD ELEMENTARY, 15-R4D1-1272

LIFESTYLE CONCEPTS, INC. DBA HOLD IT, 15-R3D2-3471 THROUGH 3473

LOMO COLD STORAGE LLC, 15-R7D1-2292 THROUGH 2296

MANAGED MOBILE, INC., 15-R4D1-3441 AND 3442

STEVE MARDEROSIAN DBA STEVE MARDEROSIAN'S HANDMADE
WOOD, 15-R3D1-2409 THROUGH 2412

MATCHMASTER DYEING & FINISHING INC., 15-R4D1-3104 AND 3105

GREGG MEKASSISIAN DBA UNIQUE CUSTOM CABINETS,
15-R6D5-4312 THROUGH 4314

MENZIES AVIATION, 14-R4D1-2739 THROUGH 2743

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MORGANN HILL DESIGNS, INC., 15-R3D2-3093
NEW INDY OXNARD, LLC, 14-R4D3-3969 AND 3970
OASIS RANCH MANAGEMENT, INC., 15-R3D3-4237 AND 4238
OCEAN SASH & DOOR COMPANY, INC., 15-R6D1-3320 THROUGH 3330
OPTIMUS CONSTRUCTION INC., 15-R3D3-3369 AND 3370
PAAT & KIMMEL DEVELOPMENT INC., 15-R3D1-0996 THROUGH 0998
PANDA EXPRESS DBA PANDA RESTAURANT GROUP, INC.,
15-R4D1-1792 THROUGH 1794
PATCH CREW, 15-R2D4-2893 THROUGH 2896
PATTY'S FORESTRY SERVICE, INC., 14-R2D4-1018 AND 1019
PEACE GENERAL BUILDING CONTRACTORS, 15-R4D3-0783
PHOENIX ELECTRIC COMPANY, 15-R1D1-4773
POINTER ENTERPRISES, INC., DBA MACDONALD'S, 15-R2D3-4757*
POLYROCK EQUIPMENT COMPANY, INC., 15-R6D5-3390 THROUGH 3392
POPEYE'S CHICKEN & BISCUITS, 15-R3D1-0583 THROUGH 0584
OCTAVIO PORTUGAL DBA OCTAVIO'S TOWING, 15-R2D1-2845
PRIDE STAFF, 15-R2D4-0104
RD RUBBER TECHNOLOGY CORP., 15-R4D4-1520
REAGENT CHEMICAL AND RESEARCH, INC. DBA WHITE FLYER
TARGETS, 15-R3D3-4233 THROUGH 4236
REDDING DRYWALL SYSTEMS INC DBA HIGH PERFORMANCE
WALL SYSTEMS, 15-R1D4-2229
REGAL CUSTOM MILLWORK INC., 15-R6D2-2812 THROUGH 2816
RUSH PERSONNEL SERVICES, INC, 15-R2D1-2510
RUVALCABA CONSTRUCTION, 15-R3D5-3376 AND 3377
SAFEWAY, INC., 15-R2D4-0857
PEDRO CERNA SANCHEZ DBA TORTILLERIA JALISCO, 15-R6D7-4040
AND 4041
SCANLON CONSTRUCTION, INC., 15-R4D1-2437
SEARS, ROEBUCK AND CO. DBA SEARS STORE #1518, 15-R3D5-4061
SEA WORLD, LLC., 15-R3D2-2129 THROUGH 2132
SERGE HAITAYAN DBA BELMONT CAR WASH, 15-R6D5-4579
THROUGH 4581
SERRATO & SON GROVE CARE, 15-R3D2-0212
SHAMROCK RANCH, LLC, 15-R2D1-4756
SOFTSCAPES THE ART OF LANDSCAPE, 15-R3D1-2259
SOLAR SERVICE CENTER, INC. DBA SOLAR ELECTRIC SERVICE
CENTER, INC, 15-R4D4-3412 AND 3413
SOUTH PASADENA FIRE STATION, 15-R4D1-2986
SOUTHWEST PRODUCTS, LLC. DBA CIRCLE FOODS, 15-R3D2-4288
THROUGH 4290
STANISLAUS TOWING & RECOVERY SERVICES, INC. DBA STANISLAUS
TOWING SERVICES, 15-R2D4-3936
STAR ELEVATOR, INC., 15-R1D1-0965
STEIN INDUSTRIES INC., 15-R6D2-3305 THROUGH 3314

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STEVE P. RADOS, INC., 15-R2D1-2050
SUMMIT PLASTERING, INC., 15-R3D1-3751 THROUGH 3754
SUPER CENTER CONCEPTS, INC. DBA SUPERIOR GROCERS,
15-R4D1-2859 AND 2860
THE DAVEY TREE EXPERT COMPANY DBA DAVEY RESOURCE GROUP,
15-R3D2-1770
THE LAMB CO-OPERATIVE INC., 15-R3D5-2835 THROUGH 2837
THE LAWSON ROOFING CO. INC., 15-R1D1-1236
THE OIL DESIGN COMPANY, INC., 15-R6D5-4037 AND 4038
UNITED PARCEL SERVICE, 14-R4D4-1988
VINEYARD OFFICE BUILDING, 14-R1D2-2879 AND 2880
WEST COAST FAB, INC., 15-R6D1-3278 THROUGH 3283
WESTERN AGGREGATES, LLC, 15-R5D1-2861 AND 2862
XKT ENGINEERING, INC., 15-R1D5-4362

ACTION: 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:

(Issues regarding staff)

NONE

The Closed Session was adjourned a 11:13am 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 11:14am.