

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on September 18, 2013
Sacramento, California**

PRESENT:

Art Carter, Chairperson
Ed Lowry, Member
Judith Freyman, Member
Ursula Clemons, Presiding Administrative Law Judge
Martin Fassler, Presiding Administrative Law Judge
Kari Johnson, Executive Officer
Jeff Mojcher, Chief Counsel
Thomas Song, Industrial Relations Counsel
Autumn Gonzalez, Industrial Relations Counsel
Lee Berlin, Executive Secretary
Marti Fisher, Policy Advocate, California Chamber of Commerce

MINUTES OF SEPTEMBER 4, 2013 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the September 4, 2013 Board Meeting. Member Lowry seconded. The Board voted to approve the draft minutes of the September 4, 2013 Board meeting.

ADMINISTRATIVE MATTERS:

(Information regarding the general administration of cases pending before the Appeals Board)

BOARD STATISTICS:

ACTION: The Board reviewed its Appeal Volume statistics for the calendar year to date. Through August, the Board received 2585 docketed appeals and disposed 2649. The number of docketed appeals was slightly down in August due to a slight change in the docketing process to accommodate review of cases which may enter the Expedited Proceedings track.

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.)

BUDGET:

ACTION: No report.

LEGISLATION:

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

ACTION: A bill analysis for AB 1165 was completed and returned to the Director's office.

CHAIRPERSON'S REPORT:

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

ACTION: Chair Carter said he will be attending the DOSH Advisory meeting on October 3 in Oakland.

BOARD MEMBERS' REPORTS:

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

ACTION: Member Freyman spoke at a meeting of the Mercer Western Occupational Safety and Health group in Monterey. She prepared a presentation about the Board's activities.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters and news from the Department and Appeals Board.)

PROGRESS REPORT ON ORACLE ENHANCEMENT PROJECT

ACTION: EO Johnson reported that the ORACLE enhancement project has become the ORACLE replacement project. The first step in developing a case management, calendaring and document handling program is to identify current processes.

STAFFING:

ACTION: Some staff tasks have been reassigned to map current Board processes. Judge Neil Robinson has experience developing software for an adjudicating body, and will take the lead on the new development project.

STAFF REPORTS:

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

ACTION: No report.

Any matter not completed at this meeting may be continued to subsequent meetings

PUBLIC COMMENT:

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

ACTION: Marti Fisher, of the California Chamber of Commerce, thanked the Board for its public service and explained the Chamber's position on AB 1165, now pending.

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

MORROW MEADOWS COPORATION, 09-R3D3-2295

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.

PARS INDUSTRIES, INC., 12-R3D2-0321 AND 0322; AND 12-R3R2-2424

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.

SILVA TRUCKING INC., 12-R6D1-1852

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:

INNOVATIVE MAINTENANCE SOLUTIONS, INC., 2012-R2D2-3151 and 3152

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to grant this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to grant this Petition for Reconsideration.

KELLY GLOBAL LOGISTICS, INC., 2012-R3D5-0014

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to grant this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to grant this Petition for Reconsideration.

ROEBBELEN CONTRACTING, INC., 2012-R2D2-3248

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.

SF BAY AREA RAPID TRANSIT, 2010-R1D1-3056-3058

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to deny this Petition for Reconsideration.

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

DIANA'S MEXICAN FOOD PRODUCTS, INC., 13-R4D4-9094

ACTION: Member Lowry moved that the Board vote to approve this Draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

ESPRESSO BAR @ SUNRISE, 13-R2D1-9102

ACTION: Member Lowry moved that the Board vote to approve this Draft Denial of Petition for Reconsideration for signature as amended. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature as amended.

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-1 PROTECTIVE SERVICES, INC., 10-R1D1-1592

AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786

ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655

BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239
THROUGH 2241

BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445
AND 3448

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.

BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563

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

C.C. MYERS, INC., 08-R1D1-0952 THROUGH 0955

CLARK PACIFIC PRECAST, LLC, ET AL, 09-R2D1-0282

COFFMAN SPECIALTIES, INC., 10-R3D3-3532

COMMERCIAL METAL FORMING, 09-R3D1-1592

COMMUNITY RECONSTRUCTION SOLUTIONS, INC., 11-R1D1-1484

CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960

CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387

CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038

DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362

DISH NETWORK CAL. SVC. CORP., 12-R4D3-0455

EZ MIX, INC., 08-R4D3-1898

FERMA CORPORATION, 12-R2D2-1669

GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687

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HARRIS CONSTRUCTION, 03-R2D5-3914
HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389
IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272
JERRY'S TREE SERVICE, A PARTNERSHIP, 13-R1D5-9022
K H S & S OF CONCORD, INC., 11-R2D2-0374 and 0375
LA CITY BUILDING AND SAFETY, 13-R4D1-9110
LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
LION RAISINS, INC., 08-R2D5-2253 AND 2254
L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
M1 CONSTRUCTION, INC., 12-R4D1-0222 AND 0223
McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
ONESTOP INTERNET, INC., 11-R4D2-2636 AND 2637
OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING,
INC., 08-R2D1-0025 AND 0026
PERSONNEL PLUS, INC., 11-R3D5-1302
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
SIERRA FOREST PRODUCTS, 09-R2D5-3979
SMUD, 08-R2D1-4887 THROUGH 4889
MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414
THROUGH 3418
SONIC DRIVE-IN, 12-R2D5-2734
STAFFCHEX, 10-R4D3-2456 THROUGH 2458
SUNRISE GROWERES FROZUN FOODS, 09-R4D3-2850
TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
TL PALVICH CONSTRUCTION, INC., 11-R3D6-1303 THROUGH 1310
TRADEMARK CONSTRUCTION CO., INC., 12-R4D1-0096 & 0097

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.)

ORDERS DISMISSING APPEAL:

SOUTH SEA SEAFOOD VILLAGE LLC., DBA SO SEA SEAFOOD VILLAGE
13-R6D7-1703

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

ORDERS GRANTING LEAVE TO FILE LATE APPEAL:

TRIANGLE COATINGS INC., 13-R1D4-1799 AND 13-R1D4-2463
SETTLEMENT ONE, 13-R3D2-2424

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

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

RJ'S DEMOLITION AND DISPOSAL, 13-R3D5-9129
GUARANTEED QUALITY RESTORATIONS, 13-R3D1-9130
ARCO AM PM ROMOLAND, 13-R3D3-9126

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

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. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
3. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
4. SMUD, 34-2010-80000723 (08-R2D1-4887)
5. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
ACTION: Chief Counsel Mojcher reported that the Board filed a demurrer brief on this matter.
6. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)

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7. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
8. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)
ACTION: Chief Counsel Mojcher reported that a hearing on this matter is set for November in Marin County.
9. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
10. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039 (07-R2D3-0275)
11. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
12. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
13. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
14. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
15. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)
16. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
17. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
18. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
19. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
20. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
21. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
22. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
23. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
24. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
25. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881 (10-R5D1-3029)

26. HOME DEPOT USA, INC., BS141301 (10-3284)
ACTION: The Board discussed this matter.
27. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
28. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00628178 (10-3667)
29. THYSSENKRUPP ELEVATOR CORP., 34-2013-80001456 (11-2217 ~ 2219)
30. BIG LOTS STORES, INC., 37-2013-00045936 (11-R3D2-1929 ~ 1931)
31. GUARDSMARK, LLC, 30-2013-00651094 (12-R3D1-0056)
32. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00652023 (12-0439)

APPELLATE COURT:

1. XL CONSTRUCTION, C074514 (2008-R1D2-1191-1193)

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.)

ACCOUNTABILITIES, INC., 12-R4D3-3120
ACCOUNTABILITIES STAFFING, INC., 13-R4D1-0111
HUMBERTO ACEVEDO JR, RESTAURANTS, INC., 13-R6D7-1691 AND 1692
AQUATIC DESIGNING INC., 12-R2D3-3605
ARBORWELL, INC., 13-R1D1-1238
ASHKHAN, INC., 13-R6D7-0300
BAKER CUSTON CABINET INC., 13-R2D5-1175
BIANCHI PARTNERSHIP, 13-R2D1-0085
BIEN PADRE FOODS, LLC., 13-R2D3-0689
BOARDWALK RESTAURANT GROUP, INC., 12-R2D1-2889 AND 2890
COLE BURR, 12-R3D3-3645
CALIFORNIA WASTE SOLUTIONS, INC., 13-R1D2-0540
CALVEDA SURVEYING, INC., 12-R3D6-3717
CBC FRAMING, INC., 13-R2D2-0930
CLAIRE'S BOUTIQUES, INC., 12-R2D5-2265 *
CORNERSTONES STAFFING SOLUTIONS, INC., 12-R2D1-3634
CRANE GUYS, LLC., 12-R4D1-2553
D C M I 12-R2D2-2896 THROUGH 2898
DANMER, INC., 13-R4D3-0859 THROUGH 0861
ERG AEROSPACE CORPORATION 13-R1D4-2208 THROUGH 2210 *
FASTEMPS, INC., 12-R3D6-1535

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FAITH FARMING, LLS., 12R6D7-334 AND 3345
FOREIGN AUTO SERVICE, INC., 13-R6D7-1234 THROUGH 1237
FRIANT MASONRY, INC 12-R2D5-3315 THROUGH 3317
CRISTOBAL GALVAN, DBA GALVAN REPAIR & MAINTENANCE,
13-R6D7-0386 AND 0387
JOSE GARCIA, 12-R3D5-2103 THROUGH 2105
GFF, INC., 12-R6D2-2333 THROUGH 2335
GRIZZLY LAKE COMMUNITY SERVICES DISTRICT, 13-R2D1-0394
AND 0935
HASA, INC., 13-R6D3-2089
HAWTHORNE COUNTRY STORE, 12-R3D2-3202
HILL STREET PROPERTY, LLC., 13-R4D1-0057 AND 0058
HOFMAR ENGINEERING & CONSTRUCTION INC., 13-R2D5-0451
IMX, INC., 12-R2D2-2899
INTEGRATED MECHANICAL SYSTEMS, 12-R4D1-3499
INTERMODAL LOGISTICS, INC., 13-R1D4-0121 AND 0122
ALBERT JACOBONI, DBA A J POOLS, 13-R2D3-1016 AND 1017
JAFEC USA, INC., 13-R1D2-2186
KARL'S CUSTON SASH & DOORS, 11-R3D1-3221 AND 3222
KEDING, DBA FLOOR COVERINGS, 13-R2D2-1511
KMK ORGANIC FARM, 12R2D5-2264
JUSTIN MAJORS, 12-R1D1-2986
MEYER CORPORATION, U.S., 12-R2D2-0743 THROUGH 0747
MICHELS/JAY DEE/COLUCCIO JOINT VENTURE, 13-R5D1-2370
MISSION LANDSCAPE COMPANIES, INC., 12-R3D6-3532
MLADEN BENTICH CONSTRUCTION CO., INC., 12-R4D1-2774
MOKELUMNE HILL FIRE PROTECTION DISTRICT, 13-R2D4-0278
MONTEREY MECHANICAL CO., 13-R1D1-1911
NATHANIEL MYERS DBA NJM PAINTING, 13-R6D7-1095 THROUGH 1097
NATIONAL STEEL & SHIPBUILDING COMPANY, 12-R6D2-2977 AND 2978
NEWMAN FLANGE & FITTING COMPANY, 09-R2D4-0939 THROUGH 0941
NOW, INC., 13-R2D1-0495
OAKVILLE PRODUCE PARTNERS, LLC., DBA GREENLEAF, 13-R1D1-0485
PACIFIC CRANE MAINTENANCE CO. LP., 13-R6D2-1972
PACIFIC WESTERN SALES, INC 13-R3D1-0407 AND 0408
MICHAEL PATRICK DAB MODERN CLEANERS, 12-R2D1-3665
PENTA BUILDING GROUP, 12-R4D1-2780
PFLUG PACKAGING & FULFILLMENT, INC., 13-R2D4-2234 THROUGH 2236
PHILLIPS 66 COMPANY, 13-R6D3-2137 THROUGH 2139
POLYSTAR PLASTICS, INC., 12-R3D6-2768 THROUGH 2770
PRICE TRANSFER, INC., 12-R3D5-3465 AND 3466
PUSD ELIOT MIDDLE 12-R4D2-2163
R. A. NEMETZ CONSTRUCTION CO., INC., 13-R2D4-0934
R. K. INDUSTRIES, INC., 12-R6D2-2117 AND 2118
RODNEY PALLA FARMS, INC., 12-R4D7-3404
SAINT GOBAIN, DBA CERTAINTEEN CORPORATION, 12-R1D2-3090 AND 3091

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SALINAS STEEL BUILDERS, 13-R1D2-1843 AND 1844
SAN GABRIEL COUNTRY CLUB, 13-R4D1-0025
SIMON GOLDEN MOUNTAINS GROUP, INC., 13-R4D1-1708 AND 1709 *
SIMON ROOFING & SHEET METAL CORP., DBA SIMON ROOFING,
13-R1D5-0636
SLO PLASTERING, INC., 13-R6D5-2179
SOLCOM, INC., DBA SOLCOM COMMUNICATIONS, INC., 13-R1D4-2054 AND 2055
SOUTHERN CALIFORNIA EDISON, 12-R4D2-1273 AND 1274
SPA FARM LABOR CONTRACTOR, INC., 13-R4D7-0072 THROUGH 0074
SRM CONSTRUCTION, INC., 13-R2D2-1931
SYAR INDUSTRIES INC., 12-R5D1-3690
THE HEDY COMPANY, INC., DBA HEDY HOLMES STAFFING SERVICES,
13-R2D4-0013
THE PEBBLE BEACH COMPANY, 10-R1D2-3575 AND 3576 *
THE WINE GROUP, INC., DBA GOLDEN STATE VINTERS, 13-R6D4-1089
THRIFT WAY FOODS INC., 12-R2D3-3096 THROUGH 3098
TOP RANK HEATING & AIR CONDITIONING, INC., 13-R2D1-0929
TORO NURSERY, 12-R3D5-3103 AND 3104
TUTOR-SALIBA CORPORATION, 13-R5D1-0712
UNIFIED GROCERS, INC., 13-R6D2-0995
USS CAL BUILDERS, INC., 12-R4D1-2508 AND 2509
V + B TRANSPORTATION, 13-R1D2-0820
VACAVILLE CHRISTIAN SCHOOLS, 13-R2D2-1151
AJ VASCONI INC., 13-R2D1-0448 AND 0449
VH PROPERTIES DBA TRUMP NATIONAL GOLF CLUB, 12-R3D5-3105
WALMART, 13-R1D2-0119
W.E O'NEIL CONSTRUCTION CO. OF CALIFORNIA, 13-R3D3-1317
WEST COAST ARBORISTS, INC., 12-R1D4-3055
ZOE'S COOKIES & OTHER DELIGHTS, 13-R2D2-1123 AND 1124

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

PERSONNEL:

(Issues regarding staff)

ACTION: No report

The Closed Session adjourned at 11:44 a.m. 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 11:45 a.m.