



# STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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Publication Date: March 19, 2015

## CONFORMED MINUTES

### THE STATE MINING AND GEOLOGY BOARD

Conducted a Regular Business Meeting on:

Thursday, April 9, 2015

9:30 A.M.

(or immediately following the Mineral Conservation and Reclamation Committee)  
Thursday, March 12, 2015

#### LOCATION:

Assembly Hearing Room #444  
State Capitol  
Sacramento, California 95814

### AGENDA

For questions regarding this Agenda, please contact the SMGB office by telephone at (916) 322-1082, or by facsimile at (916) 445-0738. This Notice and associated staff reports can be accessed electronically at the SMGB's Internet web site at: <http://www.consrv.ca.gov/smgb/> (note: Agenda reports should be available electronically approximately one week prior to the scheduled meeting/hearing date).

The SMGB requires that all lengthy comments be submitted in writing in advance of the meeting date where this matter is to be decided. To ensure that the SMGB has the opportunity to fully preview written material, comments should be received in the SMGB office located at 801 K Street, Sacramento, CA, 95814, no later than 5:00 P.M., 15 calendar days prior to the scheduled meeting date, and must identify the Agenda Item to which it relates. For written materials in excess of two pages, or that contains large maps, photos, foldouts, or other documents requiring special handling, please submit 15 copies. The SMGB will not reproduce these types of documents. Comments on Agenda Items will be accepted by electronic mail, and are subject to the same conditions set forth for other written submissions.

New submittals received after 15 calendar days prior to the scheduled meeting date will be marked as late, and the SMGB will decide whether new submittals will be considered or not during the public hearing. Late submittals, received by the SMGB at least 48 hours prior to the scheduled meeting, will be included in a late document submittal listing. Late submittals, received after 48 hours prior to the scheduled meeting, will not be included on the late document submittal list. The SMGB would accept a two-page written summary of testimony, or final comments based on, and limited to, review of the SMGB's packet and/or Executive Officer's report, at the time of the public hearing. Such two-page summaries would be included as part of the administrative record before the SMGB. This policy does not apply to quasijudicial proceedings (i.e., appeals, petitions, etc.) where administrative procedures for the submittal of documents are set forth in statute and regulation.

Individuals are responsible for presenting their own projects at the meeting.

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[NOTE: Times are approximate. The Chairman may alter the hearing start time or agenda item order during the meeting.]

**I. Call to Order (Kracov)**

**II. Pledge of Allegiance**

**III. Roll Call and Declaration of a Quorum**

The meeting was called to order at 10:00 A. M. by Chairman Kracov, with all Members present, and a quorum was declared.

**IV. Director's Report (Nechodom, Department of Conservation) [Information]**

Director Mark Nechodom, reported on the following:

- The Lead Agency Review and Assistance (LARA) program has been finalized; DOC is now looking for means by which they can seek the SMGB's input on the process in an organized and specific way.
- SMARA reform discussions are underway; the Administration has been holding weekly stakeholder meetings with several issues being consistently discussed.
- The legislature continues to be interested in Alquist-Priolo Act procedures as well as other seismic hazard identification.

Member Noushkam inquired if the DOC would be providing a monthly status update/synopsis of the SMARA stakeholder meetings. Jason Marshall stated that he would like to check with the Governor's office prior to releasing information, but could give a broad overview of the topics covered. The main points being discussed are reclamation plans, quality and content, compliance measures; adequacy of financial assurances; quality and improvement of inspections SMARA reporting fees and how best to collect from operators, and when exemptions are appropriate and when not.

• State Geologist's Report (Parrish) [Information]

Dr. John Parrish, State Geologist, reported on the following:

- April is the anniversary of the 1906 earthquake and over the last 100 years there have only been nine earthquakes in excess of 6.7 magnitude.
- May 22 marks the 100<sup>th</sup> anniversary of the eruption of Mt. Lassen. The eruption caused a 30-foot thick snowdrift to melt and created a mile wide landslide that traveled 5-6 miles, with debris flows going 30 miles.



- California has 16 active volcanoes on the USGS dangerous list. Of those, seven are considered highly dangerous, three are very highly dangerous.
- US Aid and USGS invited CGS to send a representative to Chile to examine recent volcano activity and how they handled it. In September, the Chileans will come to California.

- Office of Mine Reclamation Report (Perez) [Information]

Assistant Director of OMR, Pat Perez, reported on the following:

- There are three upcoming workshops scheduled. April 23-24 is a SMARA annual inspection workshop in Sutter Creek, June 22-23 lead agency workshop in San Luis Obispo, and November 4-5 lead agency workshop in Placer County.
- OMR is developing additional workshops in Redding and Orange County to explain the new LARA program; dates will be forthcoming.
- An overview and update on the Malakoff Diggins site, which is discharging sediment and mercury into Humbug Creek and Yuba River. Feasibility study is underway to determine how best to prevent the sediment from eroding, and how to remove the mercury, was provided.

Member Lane thanked Mr. Perez for the presentation and looks forward to reviewing the feasibility study when available. Vice Chair Anderson inquired about who was addressing the mercury issues at the study. Member Lane stated that the Sierra Fund was doing the studies. Member Potter asked whether the studies were on a watershed-wise basis, or only focused on the mine. Mr. Perez stated that the studies were on the entire watershed area.

#### **V. Chairman's Report (Kracov) [Information]**

No report provided.

#### **VI. Executive Officer's Report (Testa) [Information]**

Executive Officer Testa reported on the following:

- An update of the status of various designation rulemakings was provided for the San Luis Obispo-Santa Barbara, Stockton-Lodi and North San Francisco Bay Production-Consumption Regions.
- Designation reports for the San Gabriel and Palm Springs P-C Regions are being finalized but require final proofing and formatting. Upon completion, San Bernardino, San Luis Obispo-Santa Barbara and Stockton-Lodi P-C Regions are also scheduled to be prepared.
- Amended mining ordinances for the Counties of Orange and Siskiyou which are being revised to address the SMGB's comments are in preparation and will be considered for certification in the near future.
- Met with representatives of Riverside County to discuss their SMARA program.
- Several Alquist-Priolo preliminary maps are anticipated to be released by CGS for public comment in June.

#### **VII. Ex-Parte Communication Disclosure [Information]**

[Board Members will identify any discussions they may have had requiring disclosure pursuant to Public Resources Code Sections 663.1 and 663.2.]

- Member John Lane noted that he is involved with a surface mine located in Butte County.

#### **VIII. Public Comment Period [Information]**

[This time is scheduled to provide the public with an opportunity to address non-agenda items. Those wishing to speak should do so at this time. All persons wishing to address the SMGB should fill out a



speaker card and present it to the Secretary so that the Chair can determine the number of persons who wish to speak. Speakers are limited to three minutes except by special consent of the Chairman.]

No Public Comment provided.

**IX. Consent Items [Action]**

[All the items appearing under this section will be acted upon by the SMGB by one motion and without discussion; however, any Board member wishing to discuss a particular item may request the Chairman to remove the item from the Consent Calendar and consider it separately under Continued Business or New Business.]

1. Approval of Minutes, March 12, 2015, Regular Business Meeting.

Vice Chair Anderson moved to approve the minutes. Member Kenline seconded the motion with Members Landregan, Lane, and Mendez abstaining and the motion carried.

**X. Continued Business [Action]**

[These business items have been continued from a previous meeting/hearing.]

2. Acceptance of the 2014 Annual Fee Schedule for Mines Subject to the Surface Mining and Reclamation Act (SMARA; Public Resources Code Sections 2710 et seq. and 2207).

Executive Officer Testa noted the SMGB annually reviews and approves the Annual Fee Schedule, which is set in statute under PRC 2207, and calculated in a manner consistent with the SMGB's regulations CCR Sections 3698 and 3699. The amount requested by the Department of Conservation for Calendar Reporting Year 2014 is \$4,533,324 from \$4,444,287; this amount represents an increase of \$89,037 over the amount requested for Calendar Reporting Year 2013. The annual Fee for 2014 as calculated will increase, and the base fees that are mentioned in statute will be adjusted using a Consumer Price Index (Cost of Living Adjustment; COLA) was 2.0%. The tables provided in the staff report are the new fees figures that are established pursuant to PRC 2207. Estimating the funds to be collected in Calendar Year 2013 from set fees described in CCR Sections 3698 and 3699 to be \$2,794,089, the amount of fees to be collected for the 2014 Calendar Reporting Year is \$2,850,232. The SMGB is being asked to accept that the fees have been calculated in accordance with PRC 2208 and the SMGB's regulations.

- OMR Assistant Director, Pat Perez, provided a presentation and explanation of the fee schedule, and how the fees are calculated. It was noted there are two legislative changes under discussion regarding changes to mine reporting fee caps, as well as changes to streamline the collection of fees and payments owed to the state.
- Member Mendez inquired about the collection process for mine operators who do not pay their fees, and whether there was any legislation that would improve the collection process. Deputy Director Jason Marshall explained that the collection process would eventually result in taking the mine operator to court, at which time the attorney costs of doing so would be greater than the amount collected.

Member Mendez moved to approve the minutes. Member Noushkam seconded the motion and the motion carried with an unanimous roll call vote.



**XI. New Business [Action]**

3. Recommendations from the State Geologist for the Designation, and Termination of Designation, of Mineral Lands for Portland Cement Concrete-Grade Aggregate in the Temescal Valley Production Area, Riverside County, California.

Deferred.

4. Consideration and Possible Approval of an Amended Reclamation Plan and Certification of a Final Environmental Impact Report (State Clearinghouse No. 2013042008) for Western Aggregates, LLC (CA Mine ID #91-58-0001), Western Aggregates, LLC (Operator), Lloyd Burns (Agent), County of Yuba.

A. Consideration and Possible Certification of Final Environmental Report (State Clearinghouse No. 2013042008)

B. Consideration and Possible Approval of Amended Reclamation Plan (CA Mine ID #91-58-0001)

Executive Officer Testa noted that under SMARA a surface mining operation must have a reclamation plan and financial assurance approved by its respective lead agency. The SMGB is the SMARA lead agency for the County of Yuba, and thus is responsible for the review and approval of reclamation plans, financial assurances, and environmental documents relating to surface mining operations within this jurisdiction. The SMGB is considering certification of a Final Environmental Impact Report (Final EIR), adoption of California Environmental Quality Act (CEQA) findings of fact, adoption of a Mitigation Monitoring and Reporting Program (MMRP), and approval of an Amended Reclamation Plan for the surface mining operation known as Western Aggregates LLC Yuba County Operations.

- Kerry Shapiro, legal counsel for the operator, and Steve Lilburn, consultant, provided an overview of the project and various documents before the SMGB for consideration.
- Rick Hanson, Senior Project Manager for PMC and the SMGB's consultant, provided an overview of the CEQA documents.
- Member Lane inquired how Cal Sierra's reclamation plan coordinated with Western Aggregates', and whether there was overlap. Mr. Shapiro stated that overlap would not occur until year 50 of the plan.
- Member Landregan inquired if there was overlap between Cal Sierra and Western Aggregates, which reclamation plan would take precedence. Mr. Shapiro stated that he did not think one would take precedence over the other, and that they worked in close coordination with Cal Sierra, and would assess the situation when the project reached that phase.

Member Potter moved to certify the final EIR as adequate and complete under CEQA, and adopt the written findings and facts. Member Gavric seconded and the motion carried with a unanimous roll call vote.

Member Kenline moved to adopt the MMRP and approve the amended reclamation plan. Vice Chair Anderson seconded and the motion carried with a unanimous roll call vote.

5. Review of County of Riverside Response to a 45-Day Notice to Correct Deficiencies Pursuant to Public Resources Code Section 2774.4(a).



Executive Officer Testa noted that a lead agency as defined under SMARA means “*the city, county, San Francisco Bay Conservation and Development Commission, or the board which has the principal responsibility for approving a reclamation plan pursuant to this chapter.*” SMARA lead agencies have certain obligations and responsibilities pursuant to SMARA including approval of reclamation plans and amended reclamation plans, conducting environmental studies as appropriate, reviewing and approving financial assurance cost estimates and mechanisms, assuring the conduct of adequate inspections at least once each calendar year, and taking appropriate enforcement actions when warranted. The SMGB issued a 45-Day Notice to Correct Deficiencies (Notice) to the County dated November 21, 2014, noting 4 deficiencies (1, 2, 3 and 4). The County responded to the Notice on January 15, 2015. The SMGB is considering the County's response and whether the County has corrected the deficiencies to the satisfaction of the SMGB.

Executive Officer Testa also noted that the County has since provided its year-end report to OMR and OMR has acknowledges completion of its LART review for Riverside County. Based on review of the administrative record contained herein, concludes that the County has adequately addressed the deficiencies as noted, and has taken the appropriate steps to remedy such deficiencies. However, completion of a full round of adequate inspections has not been completed, thus, it is recommended that the SMGB continues to monitor the County's progress, set certain performance standards to be achieved by the County within a specific time frame, and have the County report back to the SMGB in one year. The performance standards offered for the SMGB's consideration are for the County to 1) provide a complete set of the 2015 inspection reports to the SMGB within three months upon completion to the SMGB for review, 2) provide summary of compliance/enforcement actions taken based on site conditions as noted in such 2015 inspection reports, and 3) provide the SMGB documentation of funding and administrative fee mechanisms upon adoption by the Board of Supervisors.

- David Jones, Chief Engineering Geologist, Riverside County, stated that the County will be hiring additional staff in the coming fiscal year to improve implementation of the SMARA program. The County inspected all mines this year and issued 36 Notices of Violation, 4 Orders to Comply, and one Administrative Penalty Order.
- Member Mendez acknowledged the County's efforts to remedy the issues noted in the 45-day notice, and thanked Mr. Jones for the progress made.
- Member Kenline inquired whether the County had considered any sort of succession plan should Mr. Jones leave his position. Mr. Jones stated that he is looking to hire a licensed geologist and bring that individual up through their program.

Member Mendez moved that the SMGB dispense with the 45-day notice and have the County report back to the board in one year on its progress in adhering to the performance standards. Member Noushkam seconded and the motion carried with a unanimous roll call vote.

6. Consideration and Approval of the State Mining and Geology Board's Revised Administrative Procedures for Submittal of Documents.

Executive Officer Testa noted that the SMGB currently releases its final agenda no later than 21 days prior to the next scheduled meeting of the SMGB or its committees, and requires interested persons to submit to the SMGB fifteen (15) written copies of all comments, technical reports, and other material concerning any matters on their agenda at least fifteen (15) days prior to the hearing date. These written materials are subsequently provided to the SMGB along with the full agenda materials. The SMGB, on June 10, 2010, last amended its administrative procedures for submittal of documents to the SMGB. At its March 12, 2015, meeting, the Policy and Legislation Committee considered revising its administrative procedures to clarify the SMGB's public participation and submittal of documents procedures, and to clearly identify those procedures in writing on its meeting



agendas. Comments received have been incorporated into the version before the SMGB today for approval consideration. A summary of the salient revisions was provided.

Member Landregan moved to accept the revised administrative procedures. Member Gavric seconded and the motion carried with a unanimous roll call vote with Member Kenline absent.

7. Consideration of a One-Time Exemption from the Surface Mining and Reclamation Act (SMARA) Pursuant to Public Resources Code Section 2714(f) for the Lower Clear Creek Aquatic Habitat and Mercury Abatement Project (California Department of Fish and Wildlife, Operator), County of Shasta.

Executive Officer Testa noted that SMARA allows for a one-time exemption for certain surface mining operations should the SMGB determine the operation to be of an infrequent nature and involve only minor surface disturbances. On March 12, 2015, a request for a one-time exemption from SMARA was received from the Department of Fish and Wildlife, Region 1 – Northern, for the Lower Clear Creek Aquatic Habitat and Mercury Abatement Project located in the County of Shasta. The nature of the project is a limited term surface mining activity on three State-and Federally-owned parcels adjacent to Clear Creek. The proposed activity is characterized as a restoration project for purposes of 1) improving the water quality of Clear Creek by removing mercury-laden fine sediments from the existing mine tailings adjacent to the creek, 2) providing a supply of low cost spawning gravel to enhance anadromous fish spawning habitat along lower Clear Creek, and 3) expanding the functional floodplain of the creek. The amount of anticipated disturbance is on the order of 43.5 acres, and will generate an estimated 330,500 cubic yards of sand to be sold by competitive bid. The proposed project is subject to SMARA. Under certain circumstances, the SMGB has the statutory authority to consider and grant an exemption from SMARA pursuant to PRC Section 2714(f). The SMGB is considering granting of a SMARA one-time exemption.

- Project proponents Patricia Bratcher, Senior Environmental Scientist, CA Department of Fish and Wildlife; Gary Diridoni, Wildlife Management Biologist, Bureau of Land Management (BLM); and Shiloe Braxton, Project Manager, Western Shasta Resource Conservation District, provided an overview of the proposed project.
- Member Anderson inquired about the mean concentration of both elemental and methyl mercury related to the materials that will be sold or disposed of on site.
- Member Lane asked whether mercury would be removed from the sand and gravel; Ms. Bratcher stated that contaminated materials would be stored in a spoils area on BLM land.
- Member Potter inquired about the status of the Environmental Assessment and Mitigated Negative Declaration; Ms. Bratcher stated that the Environmental Assessment/Initial Study and MND were submitted and went through the public review process last year, however there has been a delay in the project due to lapse of consultant's contract. Mr. Diridoni stated that the biological assessment has been produced and is awaiting review and approval by BLM.
- Member Noushkam inquired what measures will be taken to avoid runoff or other unintended contamination around the spoils area; Ms. Bratcher stated that the spoils area would be lined and capped in strict compliance with State Water Resources Control Board requirements.

Member Mendez moved to conditionally grant the exemption and have the SMGB's Executive Officer prepare and submit a comment letter to appropriate regulatory agencies outlining the SMGB's concerns. Member Gavric seconded and the motion carried with Members Landregan, Noushkam, and Anderson voting against the measure.



## **XII. Special Reports and Department Presentations [Possible Action]**

[Based on these Reports, the Chair may instruct SMGB staff to initiate administrative actions.]

### 8. Summary and Status of the Geohazards Committee Technical Advisory Committee Efforts in Review of the Alquist-Priolo Earthquake Fault Zoning Act.

Executive Officer Testa noted that the Alquist-Priolo Earthquake Fault Zoning Act (Act) was enacted in 1972, and has been amended numerous times. In 2007, the Geohazards Committee established a Technical Advisory Committee (TAC) to review the SMGB policies and criteria to clarify and possibly provide recommendations for legislative and notably regulatory amendments to the Act. The TAC met on nine occasions between November 7, 2007, and December 10, 2008. The TAC also implemented a survey of lead agencies affected by the Act. The results of this survey was published as SMGB Information Report 2009-06 and titled "A Survey of Lead Agencies Affected by the Alquist-Priolo Earthquake Fault Zoning Act." A status of the TAC efforts and status and recommendations for moving forward provided.

### 9. Information Report on Weber Creek Quarry (CA Mine ID No. 91-09-0002).

Executive Officer Testa noted that the SMGB is the lead agency pursuant to the Surface Mining and reclamation Act (SMARA) for El Dorado County. The Weber Creek Quarry (CA Mine ID #91-09-0002) is situated in El Dorado County and has been the subject of concern for over a decade and background information and summary of issues was provided.

- Will Arcand, Senior Engineering Geologist with the SMGB, provided an overview of site operations and conditions.
- Deputy Attorney General Chris Tiedemann stated that in regards to the collection of a penalty, the judgement is valid for ten years and an investigator to determine whether there any assets which could be collected on.
- Member Noushkam inquired whether the assets from the mine operator's other site could be garnished to fulfill the judgement. Deputy Attorney General Chris Tiedemann noted that such action might be possible after determining the value of assets.

No action taken.

### 10. Acceptance of Inspection Reports as Performed and Completed Pursuant to PRC Section 2774(b) for the following Surface Mining Operations:

- Richmond (Chevron) Quarry (CA Mine ID No. 91-07-0006), City of Richmond
- Atkinson Brick (CA Mine ID No. 91-19-0004), City of Compton
- Lapis Sand (CA Mine ID No. 91-27-0006), City of Marina
- Santa Paula Materials (CA Mine ID No. 91-56-0034), City of Santa Paula
- Western Aggregates (CA Mine ID No. 91-58-0001), County of Yuba
- Wheatland Clay Pit (CA Mine ID No. 91-58-0007), County of Yuba
- Stringer Pit 1 (CA Mine ID No. 91-58-0022), County of Yuba
- Stringer Pit 2 (CA Mine ID No. 91-58-0023), County of Yuba

Member Kenline moved to accept the inspection reports. Vice Chair Anderson seconded and the motion carried with a unanimous voice vote.



### **XIII. SMGB Committee Reports [Information and Possible Action]**

#### 11. Discussion of each Board Committee's Priority Objectives and Actions.

- Member Gavric summarized the priorities of the Geohazards Committee in reference to the Strategic Plan objectives 3a, 3b and 3c as follows
  - Seeing through completion of the Technical Advisory Committee's recommendations and findings, and working with DOC to see how that information is communicated to the Legislature, whether it dovetails with the concerns raised recently, and if there is a need to reconvene subgroups or form new subgroups.
  - Facilitate public comment hearings for the upcoming Alquist-Priolo Earthquake Zones that Require Investigation preliminary maps, and get a better understanding of the SMGB's role in getting feedback and public comments. Would like the committee to write a summary of public comments to better understand the concerns and ensure the SMGB's comments do not get lost.
- Member Noushkam summarized the priorities of the Board Lead Agency Standards Committee in reference to the Strategic Plan objectives 2c, 2d and 2e as follows:
  - Inspection reporting process, how it is going and how the SMGB can help.
  - Review whether fees paid to the SMGB, when acting as lead agency, are sufficient to cover costs.
  - Lead Agency SMARA responsibilities.
- Member Kenline summarized the priorities for the Mineral Conservation and Reclamation Committee in reference to the Strategic Plan objectives 1d, 1e and 1h as follows:
  - Model Ordinance and MRMP; review existing ordinances and MRMPs and communicate to policy makers not only the importance of these, but the goals of the SMGB's Strategic Plan.
  - Start engaging stakeholder in discussions of backfill regulations.
- Member Mendez summarized the priorities for the Policy and Administration Committee in reference to the Strategic Plan objectives 4a, 4d, 4e and 4g as follows:
  - Executive Officer's performance evaluation and compensation; hoping to meet with an employment lawyer in the Attorney General's office as well as someone from the Natural Resources Agency to discuss best practices.
  - Streamlining and reforming SMGB packets and making staff reports more beneficial.
  - Review the budget to determine how the SMGB might achieve more cost savings and whether we are operating within our means.

### **XIV. Continuing Business [Information]**

[This item is provided as an opportunity for any SMGB member to receive information on or any items of continuing interest to the SMGB.]

No continuing business was discussed.

### **XV. New Business [Information]**

[This item is provided as an opportunity for any SMGB member to bring any item of new business to the SMGB's attention for further discussion and further action.] Items to be discussed:

- Chairman Kracov requested a briefing on the budget from Jason Marshall.



**XVI. Executive Session (Closed to the Public) [Possible Action]**

[The SMGB will discuss information from its legal counsel on pending litigation and may take appropriate actions based on this information. This session is being held under Government Code, Section 11126.] Items to be discussed:

- i. Pending Litigation to which the SMGB is a party:
  1. Dutra Materials vs. SMGB, Chevron Products Company Real Party in Interest, Case No. N10-0388, Contra Costa Superior Court.
  2. A. Teichert and Sons, Inc. v. SMGB, Western Aggregates, LLC. Real Party in Interest, Case No. 34-2010-80000528, Sacramento County Superior Court.
  3. William Calvert, Elfriede Calvert and the Yuba Goldfields Access Coalition v. SMGB, Western Aggregates, LLC. Real Party in Interest, Case No. 34-2010-80000530, Sacramento County Superior Court.
  4. Joe & Yvette Hardesty v. SMGB, & DOES 1-100 Inclusive, Case No. 34-2010-80000594, Sacramento County Superior Court.
  5. Discussion of Superior Court cases, A. Teichert & Son, Inc. v. California State Mining and Geology Board, no. 34-80000528 and Calvert, et al. v. California State Mining and Geology Board, no. 34-2010-80000530.
- ii. In addition, the SMGB may consider litigation matters which fall under Government Code Sections 11126(e)(2)(B) and 11126(e)(2)(C).

**Re-open Regular Business Session, Announce Results of Executive Session**

No Executive Session was held.

**XVII. Announcements of Future Meetings**

June 11 was announced as the date of the next scheduled meeting, with Sacramento as the location.

**XVIII. Adjournment**

The meeting was adjourned at 5:15 p.m.

**APPROVED**

  
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Stephen M. Testa, Executive Officer

