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**MINUTES**  
**BOARD OF FORESTRY AND FIRE PROTECTION**  
**MEETING**  
**August 5, 2009**  
**SACRAMENTO**

**BOARD OF FORESTRY MEMBERS PRESENT:**

Stan Dixon, Chairman  
David Nawi  
Jim Ostrowski  
Lloyd Bradshaw  
Tom Walz  
Jim Ostrowski  
Doug Piirto

**BOARD OF FORESTRY MEMBERS ABSENT:**

Pam Giacomini  
Bruce Saito

**BOARD STAFF:**

George Gentry, Executive Officer  
Eric Huff, Executive Officer, Forester's Licensing  
Teri Ashby, Board Counsel  
Chris Zimny, Regulations Coordinator  
Laura Alarcon-Stalians, Staff Services Analyst  
Linda Cano, Executive Assistant

**DEPARTMENTAL STAFF:**

Crawford Tuttle, Chief Deputy Director  
Bill Snyder, Deputy Director  
Duane Shintaku, Asst. Deputy Director  
Russ Henly, Asst. Deputy Director  
Doug Wickizer  
Steve Jones  
Dennis Hall  
Pete Cafferata  
Tom Smith

*The Board's Mission:*

*To lead California in developing policies and programs that serve the public interest in environmentally, economically, and socially sustainable management of forest and rangelands and a fire protection system that protects and serves the people of the state.*

## **CALL TO ORDER**

Reconvene Regular Session

## **ANNOUNCEMENT OF ACTIONS TAKEN IN EXECUTIVE SESSION**

No session held

## **APPROVAL OF MINUTES FROM PREVIOUS MEETINGS**

Deferred

## **REPORT OF THE CHAIRMAN**

No report

## **REPORT OF THE DIRECTOR/DEPARTMENT**

Crawford Tuttle, Chief Deputy Director, reported the following:

- Lightning strikes in California had resulted in 200 fires in 4 complexes
- An airplane crash in Napa Valley, one death
- Ponderosa fire in Los Padres NF 16 % contained
- Weather pattern will result in unusual low pressure front, may bring rain.
- Budget has resulted in dropping mobile acquisitions. Department will now drop DC10 exclusivity contract, and is required to take 3 million in reductions for Resource Management budget. Corrections will also have budget reduced, and court decision may result in 40,000 prisoners getting early release.
- American Recovery and Re-investment Act has resulted in money available for fuel treatment work
- The Department met with the new LAO analyst regarding THP review
- The CNR Agency has released the climate adaptation strategy
- JDSF Brandon Gulch and North Fork Spur sales have been awarded.

Chair Dixon asked about Board involvement and notification in the Resource Management reductions, and possible impacts to workload. He requested that Mr. Tuttle keep the Board and the Executive Officer informed on the matter.

Member Bradshaw asked if the recent fires had impacted THP review. Mr. Tuttle said no.

## **REPORT OF BOARD'S ADVISORY COMMITTEES**

### **CALIFORNIA OAK MORTALITY TASK FORCE (COMTF) – KATIE PALMIERI**

Report is included in the Board Binder. SOD was discovered at MacKerricher State Park. Member Bradshaw asked if training was going to be offered in the coming year. Ms. Palmieri said yes. Member Nakamura asked questions about the length of the SOD effort (ongoing since 2000), if firewood was an issue (research indicates a lower risk), and if any resistant specimens have been identified (research is ongoing).

## **RANGE MANAGEMENT ADVISORY COMMITTEE –ERIC HUFF FOR TONY MEDIATI**

The next RMAC meeting will be September 15<sup>th</sup> and 16<sup>th</sup>. RMAC is conducting a survey to determine priority issues.

## **PROFESSIONAL FORESTERS EXAMINING COMMITTEE -ERIC HUFF**

PFEC's next meeting (closed session) is August 27<sup>th</sup>. Contracts are being developed for Examiner and Graders.

The following Registered Professional Forester has requested and meets the requirements for license **WITHDRAWAL** pursuant to 14 CCR §1608(a):

Mr. Walter Bemis

RPF No. 521 (4 years)

**08-09-01: Member Walz moved to approve the withdrawal of the license Walter Bemis. Member Ostrowski seconded the motion. All were in favor, and the motion carried 7-0**

Mr. Huff noted the passing of Mr. John Joseph Corbett II RPF No. 1487.

## **MONITORING STUDY GROUP -PETE CAFFERATA**

The MSG met on July 22<sup>nd</sup> at the CAL FIRE Shasta-Trinity Unit Headquarters. There were 17 people in attendance. Key agenda items covered included:

- A PowerPoint presentation by Dr. Sari Sommarstrom titled "The French Creek Watershed Monitoring Program, 1992-2004."
- Drew Coe, CVRWQCB, and Dr. Kate Sullivan, HRC, briefly summarized lessons they have learned regarding their monitoring programs.
- George Gentry led a discussion on the formation of the new MSG Effectiveness Monitoring Subcommittee.

## **CALIFORNIA FOREST PEST COUNCIL, ANNUAL REPORT - BOB RYNEARSON**

Mr. Ryneason presented on the following:

- The next Annual Meeting is November 17 and 18th in Woodland.
- An overview of the Forest Pest Council.
- Recent field tours.

Tom Smith discussed the following:

- Drought conditions have created a loss of vigor in trees and increase in mortality.
- Gold Spotted Oak borer has affected 17,000 oaks in San Diego County.
- Bark beetles are increasing in activity across the state.
- Sudden oak death has seen a decrease in its spread. There is research, ongoing in Big Sur, to study fire and sudden oak death interactions.
- Statewide, surveys have indicated 217,000 acres of mortality or injury due to biotic factors. This is down 100,000 acres from last year, probably because of an increase in burned acres.

The board members thanked the presenters. Member Walz asked for the Pest Council to provide recommendations to the board for Gold Spotted Oak Borer.

## **ACTION ITEM, REQUEST FOR RENEWAL OF APPROVED SYPS, 2009**

The Board reviewed the Final Statement of Reasons, response to Comments, and Final Adoption of the above titled regulation. The affected sections under Title 14 of the California Code of Regulations are: **Amend:** § 1091.9 SYP Effective Period, and **Adopt:** § 1091.15 Request for Renewal of Approved Sustained Yield Plans

**08-09-02:** Member Walz moved to approve Final Statement of Reasons, Response to Comments, and Final Adoption of the regulation. Member Bradshaw seconded the motion. All were in favor, and the motion carried 7-0.

## **HEARING: FOREST IMPROVEMENT PROGRAM, URBAN FORESTRY, CHAPARRAL MANAGEMENT REGULATORY UPDATES, 2009**

The Board proposed to amend and adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) described below after considering all comments, objections, and recommendations regarding the proposed action. **Adopt:** §1530.05 Waiver of Cost Sharing, and **Amend:** § 1553 Grant Guidelines, § 1554 Acceptance for Review and Filing, § 1561.1 Definitions, § 1562 General Eligibility Criteria, § 1564 Cost Sharing Schedules, § 1567 Rejection of Application.

Member Piirto asked if the regulation was consistent with recent budget trailer bill language. Mr. Zimny said yes. Member Ostrowski asked if the Board could make a final approval, given the lack of comment. Mr. Zimny said yes.

**08-09-03:** Member Walz moved to close the hearing. Member Nawi seconded the motion. All were in favor, and the motion carried 7-0.

**08-09-04:** Member Piirto moved to approve the Final Statement of Reasons, Response to Comments, and Final Adoption of the regulation. Member Bradshaw seconded the motion. All were in favor, and the motion carried 7-0

## **HEARING: FIRE PREVENTION PRECAUTIONS, 2009**

The Board proposed to amend and adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) described below after considering all comments, objections, and recommendations regarding the proposed action. **Amend:** § 938.8 Inspection for Fire

Member Piirto asked if the inspections were intended for all types of mechanical felling. Mr. Zimny said no only for those operations with rotating heads. Member Bradshaw suggested on page 1, a change to item B. the change was grammatical for clarity.

The Department, represented by Bill Snyder, made the following comments:

- Supports text edits submitted by the Department in oral testimony prepared by Jerry Ahlstrom.
- Supports adoption of rule.
- Supports amending the rule on Page 1 line 25, section 938.8 (a) (1) (B) moving the word “that day” within the sentence for grammatical clarity.
- Supports minor grammatical edit on page 2 line 3 (see final rule language) changing “patrol will provide”...to “patrol will conduct ...” as mentioned by Members Bradshaw and Walz.

Discussion between Mr. Snyder and board members indicated that the department would be monitoring the effectiveness of the rule and would report back to the committee.

## **Public comment**

Association of California Loggers, represented by Eric Carlson, made the following comments:

- Supports text edits submitted by the Department in oral testimony prepared by Jerry Ahlstrom. Supports amending the rule on Page 1 line 25, section 938.8 (a) (1) (B) moving the word “that day” within the sentence for grammatical clarity.
- Supports adoption of rule.
- ACL will work with CAL FIRE on monitoring the rule but still questions it necessity.

**08-09-05: Member Nawi moved to close the hearing. Member Walz seconded the motion. All were in favor, and the motion carried 7-0.**

Member Nawi asked if a 15 day notice was necessary. Mr. Zimny said no, upon a finding by the board.

**08-09-06: Member Nawi moved to approve the Final Statement of Reasons, Response to Comments, and Final Adoption of the regulation, with the edit for “that day” included. Member Ostrowski seconded the motion. The motion carried 6-1, with Member Walz opposing.**

Member Walz said his opposition was based on his belief that it was an undue burden.

## **HEARING: EMERGENCY NOTICE EFFECTIVE PERIOD EXTENSION, 2009**

The Board proposed to amend and adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) described below after considering all comments, objections, and recommendations regarding the proposed action. **Amend:** § 1052 Emergency Notice, § 1052.1 Emergency Conditions, § 1052.4 Emergency Notice for Fuel Hazard Reduction

The Department, represented by Bill Snyder, made the following comments:

- The proposed period of time for the extension is not necessary. The statute authorizing emergencies is specific to need for immediate work. THP review and approval is typically done in 120 days. 360 days goes beyond intent of “immediate”. Recommend that six-month provide for adequate time for THP submission and review.
- The current intention of having a timber harvest plan follow an emergency notice avoids an unintended consequences related to limiting actions needed for improving the resource. Some improvements do not happen because they are prohibited under emergency notice rules. An example is improving watercourse crossings where the emergency notice rules prohibit operations and a watercourse.
- Emergency notices have substantial protective measures and limitations to avoid significant adverse impact. Cal Fire has not monitored the effectiveness of these regulations, but generally no impacts have been disclosed by implementation monitoring by forest practice inspectors. Violations that have occurred of emergency rules have more frequently been found on nonindustrial timberlands because small landowners have less familiarity with forest practiced regulations because of their infrequent use of them. CAL FIRE recognizes there is a need for post fire salvages monitoring of impacts and does not have information on whether expanding emergency notices for duration to 360 days has a significant adverse impact on the environment.
- The original intent of emergency notices was to quickly start operations and then file a timber harvest plan. This has changed to now completing operations during the period of the emergency notice and filing multiple emergency notices to complete the work if the work cannot be completed under one emergency notice.

Fish and Game, represented by Glenda Marsh, made the following comments”

- DFG is concerned about extending emergency notices from 120 days to 360 days relative to impacts to watershed values conducted under ministerial reviews, particular related to large fires.
- The Department of Fish and Game is not aware of any THP being filed following an emergency notice. Often the practice is filing serial emergency notices.
- The Department of Fish and Game conducts little emergency notice review and inspections. Because there is limited review, filing of subsequent timber harvest plans is preferred, as this process provides for more extensive agency review.

Frank Barron, Crane Mills, made the following comments:

- Supports the proposed amendment. It is not possible to prepare a timber harvest plan in 120 days due to our companies staffing level and the involvement of a registered professional forester simultaneously administering the salvage project. It takes a year or longer to prepare THPs when biological evaluations for northern spotted owl have to be addressed. Compliance with California Environmental Quality Act takes a significant preparation time.
- Submittal of sequential emergency notice is adaptable process dependent upon quality of wood, extent of deterioration, resource issues needing to be addressed, timber operator availability, and weather. There is no certainty that sequential emergency notices will be filed versus filing a subsequent timber harvest plan after the initial emergency notice filing. The optional approach suggested by California Department of Forestry and Fire Protection (see L1) does not address the issue of the short duration of time allotted to emergency notices and the extensive time needed for THP preparation time.
- Our company notes that the Department of Fish and Game has been cooperative in a review and issuing of 1600 stream alteration permits under the emergency notice process. In some cases, they have visited the field to inspect operations.

Frank Mulhair, California License Foresters Association made the following comments:

- Supports the proposed amendment. 40% of the timber harvest plans are not approved within the 120 days emergency notice by the California Department of Forestry and Fire Protection. Most of those delayed plans are located on industrial landowners. Being large landowners, industrial landowners typically have the most land affected a emergencies.
- Emergency notice 120 days period does not include the THP preparation time, which is increasingly complicated for industrial land owners. Weather also prohibits analysis time for THP preparation.
- The Department of Fish and Game has been occasionally involved in emergency notices by issuing 1600 streambed alteration permits and consulted on a review of Osprey nest sites.
- Supports to regulation because complete preparation of THP and operations cannot be conducted in 120 days, resulting in the filing of multiple emergency notices, which is an inefficient process.

Michele Dias, California Forestry Association, spoke in favor of the regulation.

Bob Rynearson, Beatty Associates made the following comments:

- Commenter notes that during the Whitmore Fire a timber harvest plan was filed following an emergency notice because the emergency notice area was within a threatened or impaired watershed, which prohibited harvesting in watercourses.
- The legislative intent of PRC 4592 was to capture dead material and is intent is being impacted by unnecessary paperwork.

**08-09-07: Member Bradshaw moved to close the hearing. Member Walz seconded the motion. All were in favor, and the motion carried 7-0.**

Member Nawi asked about possible impacts from these operations and if an assessment had been done. Mr. Zimny replied that the nature of the operations are severely restricted, and subject to the full forest practice rules.

**08-09-08: Member Piirto moved to tentatively approve the regulation, and to ask staff to prepare the Final Statement of Reasons, Response to Comments, and Final Adoption of the regulation for October. Member Bradshaw seconded the motion. The motion carried 6-1, with Member Nawi opposed.**

### **HEARING: EVALUATION FOR “TAKE” AVOIDANCE OF NORTHERN SPOTTED OWL, 2009.**

The Board considered changes made to the proposed regulations of Title 14 of the California Code of Regulations (14 CCR), affecting: §895 - Abbreviations Applicable Throughout Chapter, § 895.1 – Definitions, § 919.9, 939.9 - Northern Spotted Owl, § 919.10, 939.10 – Take of Northern Spotted Owl.

### **AGENCY COMMENT**

Dennis Hall, representing CAL FIRE:

- See comments regarding letter submitted to the board on July 10, 2009. Specifically see corrections suggested to subsection 919.9 (g).

Glenda Marsh, representing DFG made the following comments:

- While the modified regulation published on May 29 included modifications to the spotted owl expert definition as recommended in the May 9, 2009, DFG letter, it did not go far enough to provide adequate DFG oversight of expertise. Three primary points are recommended to include in the regulation. They are based on the need to maintain spotted owl expert quality control: 1) qualifications to review of spotted owl expert, 2) work product review, 3) assistant in training on an annual basis.
- DFG recommends that a spotted owl expert educational requirement in forestry not be a suitable qualification. The DFG is committed to training spotted owl experts as this is one of the most important parts of a credible expertise system.
- The current rule proposal does not provide adequate Department of Fish and Game oversight. Only provides Cal Fire discretion to get spotted owl qualification input. DFG wants to be removed from being mentioned in the rule regarding spotted owl expert if DFG cannot be substantially involved as provided in their recommendations.
- Because the Department of Fish and Game will not be involved in reviewing spotted owl expert input for a particular timber harvest plan, there is a need to have high assurance that the spotted owl expert is highly qualified. Noted that there are previous errors with information submitted by registered professional foresters regarding spotted owl assessments.

### **PUBLIC COMMENT**

Pete Ribar, Campbell-Hawthorne:

- The issue is the need for expertise regarding spotted owl impacts assessments for timber harvest review in preparation. Plan proponents must make sure they have qualified people who are trained and also that info is in the record for anyone to see. The regulation should be passed to allow all options for plan proponents to use in preparing a spotted owl assessment.

Michelle Dias, CFA:

- The new rule should be adopted. The new spotted owl expert definition provides a high level of expertise for the department. The Department of Fish and Game can review any THP and then provide comments to assure adequate protection of the species.

Pamela Flick, Defenders of Wildlife:

- We believe that the proposed regulations would improperly delegate authority to CAL FIRE to make decisions affecting public trust wildlife resources that is under the clear authority of the Department of Fish and Game (DFG) and the U.S. Fish and Wildlife Service (FWS). In July of this year, the San Francisco Superior Court set aside the incidental take standards the Board had established as part of the Coho Salmon Incidental Take Assistance 2007 package, finding that the Board of Forestry exceeded its authority and “has no authority to make a determination of what constitutes minimization and full mitigation under CESA.” Additionally, the court struck down the DFG’s regulations, which improperly delegated to the Board and CAL FIRE authority to assess take and take avoidance of listed coho salmon. The similarities between what the coho regulations would have done and what the regulations before you propose to do are strikingly similar. The legal ramifications of adopting the proposed NSO regulations should be carefully considered by the board.
- Simply requiring the Director CAL FIRE to forward “Spotted Owl Expert” (SOE) qualifications received to DFG and FWS of qualifications as outlined in the modified SOE definition for does not satisfy the requirement for oversight by the wildlife agencies on the take determinations such so called “experts” will make. As written, the regulations do not require that an SOE even submit an application detailing his or her qualifications. The supposed engagement of DFG & FWS would only occur if the CAL FIRE director requests verification of the SOE’s qualifications. Furthermore, the regulations never even say what, if anything, the agencies need to do in response to receiving the qualifications. It’s also questionable if the California Forest Practice Rules can require the FWS to do anything at all.
- In the Notice of Proposed Rulemaking dated March 20, 2008 [sic] released in spring 2009, under Specific Purpose of the Regulation, Section 919.10 [939.10], it states that the changes to this section “requires the director [of CAL FIRE] to make a determination of take. The amendments are necessary to make clear the determination of take rests with the lead agency.” The director of CAL FIRE does not have the authority under the federal Endangered Species Act (ESA) to make take determinations for listed species and therefore does not have authority to make take avoidance determinations. California’s Fish & Game Code clearly assigns primary responsibility for protection of public trust wildlife resources to the Department of Fish and Game. The lack of funding or leadership at the Department does not constitute legally adequate reasons for relinquishing its duty to ensure the protection and conservation of California’s wildlife and habitat. Furthermore, CAL FIRE admittedly has little biological expertise, even further calling into question these proposed regulations. Not only should take avoidance determinations under the ESA be made through the U.S. Fish & Wildlife Service (Service), CAL FIRE must not allow substantial reduction in habitat for fish and wildlife species under the California Environmental Quality Act. We strongly feel that the proposed regulations fall far short of either of these legal mandates.
- The individual responsible for making take avoidance determinations should be completely independent of the timber companies for which the determinations must be made. Otherwise, the determinations will lack any credibility whatsoever.
- The regulations propose a flawed mechanism for sufficiently demonstrating the absence of owls from an area. Normal survey techniques are insufficient to make this determination and are extremely problematic since the invasion and presence of the more aggressive barred owl commonly suppresses response from Northern spotted owls. This can lead to false negatives and could lead to occupied habitat being deemed unoccupied. It is questionable as to how formerly occupied, clearly suitable habitat can be destroyed if found (perhaps erroneously) to be unoccupied for just three years. Just because habitat has been unused or owl presence has not

been detected for three years does not necessarily mean that it is no longer important habitat for the recovery of the species.

- The above noted reference found in the Notice of Proposed Rulemaking dated May 29, 2009, under Section 919.9 [939.9] (b)(4) is particularly confounding. Monitoring is a key component to any successful plan and must be integrated to ensure that measures adopted by the plan are being implemented on the ground.
- This same Board voted down an incredibly similar rules package just last year
- The various iterations of these proposed regulations, beginning last year, vary quite insignificantly. Interestingly, this very Board voted down the strikingly comparable regulations last September. We believe that a few minor changes and mere semantics is an unacceptable reason to accept these rules when such a similar rules package failed last year.
- Instead of adopting these bogus regulations that do nothing more than allow the fox to guard the henhouse, the Board should work with the U.S. Fish & Wildlife Service to find funding sources for the Service to meaningfully re-engage in NSO take and/or take avoidance determinations for all timber harvest plans. These rules do not even attempt to get to the real problem, but instead relax protections of a federally threatened species by way of unabated habitat destruction under the guise of financial inability to do not only the right thing, but what is required by federal and state law.

Natalyn Delapp:

- The proposal should be rejected and the Board should engage with discussions with agencies and land owners to cover the cost of agency work to do the reviews.
- The July 2009 coho ruling declared the Board exceeded its authority. Only agencies or the Department of Fish and Game can make a determination of take. In this situation Cal Fire is making a determination of take by using its private expert is providing the information.

Frank Barron, Crane Mills:

- Supports a role because the DFG and U.S. Fish and Wildlife Service cannot do verb used to and we need a fix to the timber harbors plan process review. Rule does not modify the protection requirements.
- Does not support modifying the rule cutting out some of the registered professional foresters to conduct the spotted owl expert work, as this eliminates and minimizes the pool of qualified people

Bill Keye, CLFA:

- Believes registered professional forest can be qualified as spotted owl experts. Notes list of the relevant courses that he took justifying a basis for his scientific education.
- Rule package has been strengthened in renote. Protection measures are in place, and this is just a fix in the process for timber harbors to review.

Eric Carlsen, ACL:

- Supports the rule package and notes that delay of northern spotted owl timber harvest plan processing because of no technical assistance and this delayed one operator an entire month to begin his operations. This had an economic impact.

**08-09-09: Member Walz moved to close the hearing. Member Piirto seconded the motion. All were in favor, and the motion carried 7-0.**

**08-09-10: Member Ostrowski moved to tentatively approve the regulation, and to ask staff to prepare the Final Statement of Reasons, Response to Comments, and Final Adoption of the regulation for October. Member Bradshaw seconded the motion. The motion carried 5-1, with Members Nawi and Dixon opposed.**

## **REPORT OF FOREST PRACTICE, POLICY, MANAGEMENT, AND RESOURCE PROTECTION COMMITTEES.**

### **FOREST PRACTICE COMMITTEE**

Recommendation to Board to publish 45 Day Notice for proposed regulations for "Fire Tool Civil Penalties" and "Definition of Employee"

**08-09-11: Member Ostrowski moved to put out a 45 day notice for the proposed regulation "Fire Tool Civil Penalties". Member Nawi seconded the motion. All were in favor, and the motion carried 6-0 with the abstention of**

**08-09-12: Member Ostrowski moved to put out a 45 day notice for the proposed regulation "Definition of an Employee". Member Nawi seconded the motion. All were in favor, and the motion carried 7-0.**

### **MANAGEMENT COMMITTEE**

The Committee asked for Board consent to direct the Executive Officer to write a letter to the Department and the Jackson Advisory Committee to encourage them to provide additional flexibility to improve timber sale viability. The Board gave consent.

The Committee asked for Board consent to direct the Executive Officer to communicate with the NCRWQCB on the TMDL implementation plan for the Lost Creek section of the Klamath. The Board gave consent.

### **POLICY COMMITTEE**

Review proposed regulatory language, and possible comment letter regarding CEQA Guidelines.

**08-09-13: Member Ostrowski moved to approve the letter prepared by the Executive Officer and submit it to Agency. Member Nawi seconded the motion. All were in favor, and the motion carried 7-0**

### **RESOURCE PROTECTION COMMITTEE**

Update on the RMAC recommendations to Strategic Plan of January 2000, Section V, Appendix, Officers.

**08-09-14: Member Walz moved to approve changes to the Strategic Plan. Member Nakamura seconded the motion. All were in favor, and the motion carried 7-0**

The Committee asked for Board consent to direct the Executive Officer to prepare a letter to convey to the units the legal opinion of the Attorney General on Title 14 Section 1270 et. seq. regulations. The Board gave consent.

## **REPORT OF THE REGULATIONS COORDINATOR**

Mr. Zimny noted that the October meeting was the deadline for T or I extension. For September, a hearing will be held on the proposed Anadromous Salmonid Rules.

## **REPORT OF EXECUTIVE OFFICER**

No report

## **PUBLIC FORUM**

No commenters

## **NEW AND UNFINISHED BUSINESS**

None

## **ADJOURNMENT**