

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
FULL COMMISSION
MEETING MINUTES**

April 14, 2016

1. CALL TO ORDER

Vice Chair Douglas Wiele welcomed everyone and called the meeting of the California Commission on Disability Access (CCDA or Commission) to order at 10:00 a.m. at the DSA Los Angeles Regional Office, 700 North Alameda Street, 5th Floor, Los Angeles, 90012.

The off-site meeting locations were the DSA Headquarters/Sacramento Regional Office, 1102 Q Street, 5th Floor, Conference Room B, Sacramento, 95811; and the DSA Oakland Regional Office, 1515 Clay Street, Suite 1201, Oakland 94612.

ROLL CALL

Staff Member Jackson called the roll and announced that a quorum was not present.

Commissioners Present:

Guy Leemhuis, Chair
Douglas Wiele, Vice Chair
Steve Dolim
Chris Downey
Kamala Harris, Attorney General,
represented by Anthony Seferian
Walter Hughes (Teleconference)
Lillibeth Navarro
Michael Paravagna
Chester "Chet" Widom, State Architect
Betty Wilson
Laurie Cohen Yoo

Commissioners Absent:

Scott Hauge
Tom Lackey
Celia McGuinness
Richard Roth
Tony Thurmond

Staff Present:

Angela Jemmott, Executive Director
Addison Embrey, Program Analyst
Brandon Estes, Program Analyst
Fajola Jackson, Office Administrator

Also Present:

Ida Clair, Certified Access Specialist (CASP), Senior Architect, Division of the State Architect (DSA)
Richard Halloran, CASP, Senior Building Inspector, Americans with Disabilities (ADA) Coordinator, City and County of San Francisco, Checklist Committee Member (Teleconference)
James Vitale, CASP, Senior Architect, DSA, past Executive Director of the CCDA

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Reneé Webster-Hawkins, Executive Director, California Pollution Control Financing Authority (CPCFA)

PLEDGE OF ALLEGIANCE

Vice Chair Wiele led the Commission in the Pledge of Allegiance.

HOUSEKEEPING ITEMS

Vice Chair Wiele reviewed the meeting protocols.

2. INTRODUCTION OF NEW COMMISSIONERS

- a. Assembly Member Tom Lackey**
- b. Walter Hughes**

Vice Chair Wiele tabled this agenda item to the next meeting.

3. SWEARING-IN OF CCDA COMMISSIONERS

Commissioner Seferian led the swearing-in of office for re-appointment of Commissioners Wilson and Yoo.

4. APPROVAL OF MEETING MINUTES (OCTOBER 21, 2015, AND JANUARY 6, 2016) – ACTION

Vice Chair Wiele tabled this agenda item to the next meeting due to the lack of a quorum.

5. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

James Vitale, CASp, Senior Architect at DSA, and past Executive Director of the CCDA, stated the Unruh Civil Rights Act also allows complaints to be raised against apartment houses with more than four units. There is an attorney in San Diego who has begun to file suits with an individual acting as a tester and using that as the justification to examine apartment houses unannounced and bring action against them in federal court for noncompliance with the ADA.

Commissioner Yoo thanked Mr. Vitale for bringing this to the Commission's attention and asked if the tester is a member of the disability community who is not seeking to rent an apartment on these premises. Mr. Vitale answered in the affirmative.

Commissioner Seferian asked how many lawsuits against apartment owners Mr. Vitale is aware of and what types of violations are alleged. Mr. Vitale stated there has been a lawsuit filed against a hotel and an apartment building. The violations are parking and general access to the building.

Commissioner Widom asked if they are exempt from the laws since they were built prior to them. Mr. Vitale answered federal law does not have a requirement for upgrading facilities. The only requirement that exists in the California Building Code (CBC) is in the event that a remodel was done after 1993. Background investigation will be required.

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**6. PRESENTATION – DEVELOPMENT OF THE TECHNICAL LANGUAGE OF
AB 1230 – UPDATE**

Presenter:

**Reneé Webster-Hawkins, Executive Director, California Pollution Control
Financing Authority**

Ms. Webster-Hawkins provided an overview, by way of a PowerPoint presentation, of the program development and implementation of the CPCFA's Small Business Capital Access Program (CalCAP ADA) that assists small businesses with tenant improvements in complying with the ADA. She summarized what Assembly Bill (AB) 1230 authorizes, eligibility for CalCAP ADA loans, program objectives, and development activities. The CPCFA will conduct its first webinar for lenders on April 20th.

Commissioner Questions and Discussion

Commissioner Dolim asked if this is an element of a larger loan. Ms. Webster-Hawkins stated it is a credit enhancement as opposed to a direct loan.

Commissioner Widom asked if the solicitation is for a staff person or an outside contractor. Ms. Webster-Hawkins stated the solicitation has not gone out yet but is being considered for both models.

Commissioner Widom asked about loans over the \$50,000 limit. Ms. Webster-Hawkins stated business owners are not limited from making larger loans, although the program coverage of the loan has a \$50,000 cap.

Commissioner Dolim asked if the ADA portion of a larger loan could be isolated for this program coverage. Ms. Webster-Hawkins stated the loan would be itemized so the costs associated with ADA compliance could be identified.

Commissioner Widom asked about the potential conflict between the subject matter expert (SME) and the CASp through the interpretation of the code. Ms. Webster-Hawkins stated the CPCFA is not looking to create a co-analysis. The technical navigator will translate the languages of both architects and CASps to the lenders.

Commissioner Widom cautioned the CPCFA when using the term ADA. The CBC is different. The fact that the statute is geared towards the ADA is a problem since there are things required by the CBC that are not part of the ADA. Ms. Webster-Hawkins agreed that there are program elements that need to go through a regulatory process to correct.

Commissioner Navarro stated the stronger version of the ADA must prevail and not get lost in the discussion.

Commissioner Dolim asked staff to post a summation of this program on the CCDA website.

Action Items:

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- Staff is to post a summation of the CalCAP ADA program on the CCDA website.

7. SUBCOMMITTEE – UPDATE

a. Education and Outreach

Commissioner Wilson, Chair of the Education and Outreach (E&O) Committee, asked Commissioners to join in developing contacts statewide. Southern California is the media capital of the world. She asked for Commissioners to identify a celebrity to be the CCDA spokesperson to help get the word out. The E&O Committee will be working with the Checklist Committee to finalize and distribute a community needs survey, and will be working Legislative Committee on coordinating a town hall meeting in the Central Valley.

Commissioner Wilson stated she has been asked to coordinate the International Conference on Disability, which will be held in Los Angeles in October of 2016.

Commissioner Navarro suggested inviting the L.A. Chamber of Commerce and their small business members to be part of the CalCAP webinar on April 20th as a way to introduce the CCDA and share something that is useful to them at the same time.

Executive Director Jemmott asked if the CCDA could be a part of the webinar. Ms. Webster-Hawkins stated the CCDA is welcome. At the beginning of the webinar, the CPCFA will give an overview of the program and its stakeholders. She invited the CCDA to introduce itself, its scope, and concerns and objectives about the program.

b. Research and Analysis Data Collection Project

Commissioner Yoo, Chair of the Research Committee, stated the Committee continues to focus on data collection through the complaints, demand letters, and Case Resolution Forms received. Staff has developed a reporting framework to track information and is assessing to ensure the complaints and demand letters are linked with the Case Resolution Forms. The final Case Resolution Form will be presented at the next full Commission meeting for approval.

The Committee has also focused on the self-identified high-frequency litigants reported as part of the initial filing information and the role of the Commission in relation to those high-frequency litigants. The Committee determined that the Commission's focus should be limited to the impact on research and case reporting, not policing, monitoring, or assessing whether litigants were appropriately reporting or neglecting to report, but leaving that up to other agencies. Staff is working on retrieving the funds due to the Commission as part of the fees tendered by these litigants.

Commissioner Wilson stated it would be helpful in how the Commission expends its energies to learn what areas of the state give the most feedback. Commissioner Yoo agreed and stated the Committee is working on an improved method of reporting to learn more specifics about the violations.

c. Legislative Committee

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Commissioner Paravagna, Chair of the Legislative Committee, stated he and Executive Director Jemmott met with Commissioners Thurmond and Roth to discuss legislation and access in California, and have been in discussion with Commissioner Thurmond's and Assembly Member Olsen's offices on putting together town hall meetings. The Legislative Committee will work with the E&O Committee on like goals to conserve effort and budget.

d. Checklist Committee

Commissioner Dolim, Chair of the Checklist Committee, stated the first meeting of part two of the Checklist Committee was on April 6th. He applauded the outreach done to expand the Committee membership and asked Commissioners for suggestions on other organizations that could participate, such as the International Council of Shopping Centers (ICSC), the California Business Properties Association (CBPA), and the Building Owners and Managers Association (BOMA).

Vice Chair Wiele offered to locate representatives from those organizations.

Commissioner Dolim stated the Checklist Committee members were given an overview of the history, goals, and strategic plan of the CCDA and the top-ten lawsuit violations for reference. That foundation will be used as a launching board to discuss the creation of a consumer guide. The Committee is in the process of developing a survey that will go out to the broad constituency of Committee Member organizations. Committee Members have been asked to submit five survey questions that would be most helpful for their members. The Committee plans to send out the survey by next month and the survey results will be presented at the next full Commission meeting.

Action Items:

- No action items.

8. EXECUTIVE REPORT

a. Strategic Plan Review

Executive Director Jemmott summarized the nine goals outlined in the CCDA Strategic Plan and highlighted accomplishments to date.

b. AB 1521 Funding Status

Executive Director Jemmott stated the CCDA received notification since October 2015 that only one case financially had self-identified as a high-frequency litigant and that the \$500 due the Commission was subject to a \$5.00 fee. That case was in January of 2016 in the Court of Los Angeles. \$495 has been placed into the CCDA account as of March of 2016. Since then, staff has presented examples to the court research department out of the many cases submitted to the CCDA that have self-identified as high-frequency litigants.

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Executive Director Jemmott stated staff has asked what forms have been submitted to the courts and what has or has not been marked. Currently, there is no clear indication of the funds that have been collected by the courts or how they have been collected.

Commissioner Yoo asked what the time lapse is between the collection of the \$1,000 fee and the \$500 distribution to the CCDA. Executive Director Jemmott stated there is a 45-day time lapse. The issue is that staff was told there were no funds collected in February even though self-identified high-frequency litigant submittals were received by the CCDA in February.

Commissioner Yoo asked who is responsible for enforcing the obligation to self-identify and tender the funds. Executive Director Jemmott stated her contact at the Judicial Council said assessment of fees with lack of enforcement was a common issue.

Commissioner Wilson stated the need for legislators to help establish a mechanism for the Commission to receive the funds due.

Commissioner Yoo suggested, although the Commission would not want to become the enforcement arm, reaching out on an informational basis to some of the firms that have self-identified and clearly say the Commission is not checking up on them or enforcing for disciplinary purposes. If they did submit a payment, she recommended that they inform the CCDA to whom it was submitted so the CCDA can locate the gaps, whether in the court system or in the recorders not tendering the necessary funds. Ideally, the Commission would give the information to another agency to make the inquiry.

Vice Chair Wiele agreed that it is not the responsibility of the Commission to collect. He suggested contacting the attorney general's office to find out the name of the entity that should be responsible.

Commissioner Seferian stated the attorney general's office would be happy to work with staff to expedite the processing of the funds.

c. Review of Outreach Efforts Conducted by Executive Director

Executive Director Jemmott stated she sat in on board meetings, participated in the 24th Annual CALBO Conference as a speaker in one of their access events, and has been invited to meet with a number of jurisdictions to build relationships. She was invited to participate on an Advisory Committee to present about the CCDA. She, Chair Leemhuis, and Commissioner Paravagna have been outreaching to members of the Legislature.

d. Volunteer Staffing Updates

Executive Director Jemmott stated the need for additional staffing due to the added responsibility of collecting case resolutions. The applicants selected from local universities will begin on April 25th.

Action Items:

- No action items.

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9. BILL TRACKING

a. AB 54 (Olsen R) Disability access: construction-related accessibility claims: demand letters

Executive Director Jemmott stated AB 54 requires disability access complaint letters to be submitted to the CCDA in a standardized format to streamline the data and identify high-frequently litigants. The format is being formalized by the Research Committee. This bill ensures consistency in data collection in a format that is easily retrievable by the CCDA. This bill is currently in the second house; there is no opposition to this bill.

Commissioner Seferian asked if this bill would allow the form to be submitted online. Executive Director Jemmott stated the form is online in PDF format.

Commissioner Yoo stated the importance of reviewing the language to ensure flexibility so that, if the format requires updating, it will not require additional legislation.

Chair Leemhuis agreed and stated the Research Committee has that charge. He suggested that the Research Committee work with the Legislative Committee to advocate any language the Research Committee develops.

b. AB 2093 (Steinorth R) Disability access

Executive Director Jemmott summarized AB 2093 and stated this bill is currently in the second house. Ida Clair stated AB 2093 passed the appropriations committee and is on the consent calendar.

Chair Leemhuis asked that the Executive Committee discuss weighing in on this bill and that the Legislative Committee continue to discuss this bill.

c. AB 2602 (Gatto D) Disabled parking placards

Executive Director Jemmott summarized AB 2602 and stated this bill has been amended, is controversial, and is still in discussion.

Chair Leemhuis asked the Legislative Committee to discuss this bill; to offer thoughts about the implementation of the proposal such as the controversial issues of reapplying for parking placards, the inaccessibility of most cities, and the insufficient number of disabled parking spaces; and to reach out to the author of this bill and others to discuss concerns and weigh in in a positive and instructional way. He suggested developing a green paper highlighting issues to consider.

Commissioner Hughes stated he welcomed the legislation and its proposed intent due to the increase of non-disabled users of disabled parking placards. He agreed with the bill's proposed reapplication mandate to cut down on fraudulent users of the placards.

d. AB 2667 (Thurmond D) Civil rights: Unruh Civil Rights Act: waivers

Executive Director Jemmott summarized AB 2667 and stated this bill is meant to close a loophole in the Unruh Civil Rights Act and has no opposition.

e. AB 2873 (Thurmond D) Certified access specialists

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Executive Director Jemmott summarized AB 2673 and stated she and Commissioner Paravagna met with the author to discuss this bill.

Commissioner Dolim suggested that the author of this bill consider drafting in language to introduce the issue of unincorporated areas of counties not collecting business license fees. Commissioner Paravagna added that the author should be made aware of collection issues with the current fee.

f. SB 269 (Roth D) Disability access

Executive Director Jemmott summarized Senate Bill (SB) 269. Ida Clair stated SB 269 passed the appropriations committee and is on the consent calendar.

Chair Leemhuis stated he is scheduling a meeting with the author's office to discuss this bill and the definition of small business. He stated it would be helpful to begin identifying the multiple definitions for small business to help inform the Legislature. The language on the fact sheet may no longer be relevant due to amendments. He asked the Legislative Committee to discuss this issue.

g. SB 1142 (Moorlach R) Disability access

Executive Director Jemmott summarized SB 1142.

Chair Leemhuis stated this bill is a right to cure and contains inaccurate information based on available data. He asked the Legislative Committee to reach out to the author to find out where they got their statistics and offer them more accurate information.

Commissioner Hughes stated legislators tend to respond in a negative way to press reports about ADA lawsuits.

Chair Leemhuis stated part of the CCDA Strategic Plan is to provide education. The media often puts out articles that are anecdotal and based on assumptions. He appointed Commissioner Hughes to the Legislative Committee and asked him to follow up with Commissioner Paravagna.

h. SB 1406 (Mendoza D) Construction-related accessibility: public entities

Executive Director Jemmott summarized SB 1406 and stated she met with the author's staff to discuss the bill. The staff told her that the author thought the CCDA would be a good entity to add this project to since the CCDA was collecting access violation lawsuit information already. Although the CCDA has the process in place to collect and track additional lawsuit information, Executive Director Jemmott raised the question of staff capacity in asking the CCDA to include public entities in their data collection.

Chair Leemhuis suggested holding a special meeting to discuss this bill, how to address the Legislature about their assumption that the CCDA is an attorney-filing data collection service, and how to educate them on the issues. This bill creates contention and undermines the Commission's goal of bringing the business and disability communities together. Collecting data is good, but there is a lot of other data with respect to why there is not access in the state besides just lawsuits. It is good that the

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Legislature is including the CCDA in their bills, but Chair Leemhuis stated the need for them to talk to the executive director of the CCDA beforehand.

Chair Leemhuis suggested having a meet-and-greet, offering technical assistance, providing a primer on the CCDA Strategic Plan, developing a philosophy and bullet points on how to move forward in broaching the information, and thinking about pitfalls such as the words used in bills.

Commissioner Yoo stated the need to keep a close watch on the language. This bill does not address AB 1521. It is important that the CCDA keeps control of the manner in which the data collection information is obtained.

Commissioner Wilson stated the E&O Committee is willing to work on seminars, workshops, and other training necessary to educate elected officials that interpret laws and media. This type of educational process will require the coordination of all Committees. She suggested beginning the process in the next planned event in the Central Valley.

Chair Leemhuis asked staff to add, as an agenda item for the next Executive Committee, writing a paper to disseminate to the Legislature on how to best get in touch with the CCDA and a checklist of best practices for engaging the CCDA for input prior to putting the CCDA in a bill that will yield better language and suggested direction on where their energies may go.

Chair Leemhuis suggested inviting high-frequency litigants and staffers who are writing these bills to present at the next full Commission meeting to provide their perspective.

Action Items:

- AB 54 – the Research Committee is to work with the Legislative Committee to advocate any language the Research Committee develops
- AB 2093 – the Executive Committee is to discuss weighing in on this bill
- AB 2093 – the Legislative Committee is to continue to discuss this bill
- AB 2602 – the Legislative Committee is to discuss this bill; to offer thoughts about the implementation of the proposal such as the controversial issues of reapplying for parking placards, the inaccessibility of most cities, and the insufficient number of disabled parking spaces; and to reach out to the author of this bill and others to discuss concerns and weigh in in a positive and instructional way
- AB 2602 – the Legislative Committee is to develop a green paper highlighting issues to consider
- SB 269 – the Legislative Committee is to discuss this bill and the definition of small business
- SB 1142 – the Legislative Committee is to reach out to the author to find out where they got their statistics and offer them more accurate information

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- Staff is to add an agenda item for the next Executive Committee about writing a paper to disseminate to the Legislature on how to best get in touch with the CCDA and a checklist of best practices for engaging the CCDA for input prior to putting the CCDA in a bill that will yield better language and suggested direction on where their energies may go
- Staff is to invite high-frequency litigants and staffers who are writing these bills to present at the next full Commission meeting to provide their perspective

10. PRESENTATION(S) ON THE CURRENT STATUS OF CASP SERVICES

- Division of the State Architect

Ida Clair, a CASp and Senior Architect at the DSA, stated she is the Technical Administrator of the CASp program. She provided an update on the CASp program:

- CASp Regulations have been submitted for final approval – approval is anticipated in mid-May
- Phase II of the CASp Regulations has been implemented
- The most recent CASp examination was held in February of 2016 with the result of 32 new CASps, including 11 licensed architects, 5 civil engineers, 2 structural engineers, and 3 building officials
- The DSA Academy is offering additional access classes throughout the state to CASps, architects, and others
- The DSA Academy has introduced new classes for access professionals on public housing, housing at a place of education and transient lodging, access plan review, and the expanded 2013-2016 CBC accessibility amendments
- The DSA has expanded its outreach and Ms. Clair has been requested to speak at an ADA conference at the Vacaville Chamber of Commerce on April 26th from 4-6 p.m., in partnership with the local building department presenting on the CASp program
- The next CASp newsletter, *CASP Report*, is going out next month
- The CASp Code monthly discussion group, made up mainly of CASps and building officials, continues to be well-attended

Commissioner Questions and Discussion

Commissioner Dolim asked about the total number of CASps. Ms. Clair stated there are approximately 725.

Commissioner Paravagna asked Ms. Clair to highlight changes made in the CASp Regulations. Ms. Clair stated the goals of Phase I were to create a level of professional CASp standards that was not included in the first regulations and to enable the DSA to proceed with enforcement acts against CASps.

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- City and County of San Francisco

Richard Halloran, a CASp, Senior Building Inspector, and ADA Coordinator at the City and County of San Francisco, and Checklist Committee Member, stated the two greatest issues he has seen on the local level are that the CASp is an unfunded mandate and that there is a lack of training opportunities. Building departments are not given any support to fund a CASp program or to train CASps, so there is a shortage of CASp inspectors. He stated he receives fifty phone calls per week from architects, property owners, and business owners asking for his help. They tell Mr. Halloran that having a CASp inspection makes a huge difference in the product that ends up in the field. Mr. Halloran encouraged the Commission to find ways to get CASp inspectors into the building departments, because it benefits everyone.

Commissioner Questions and Discussion

Commissioner Dolim stated some bills suggest that all building inspectors be CASp certified.

Mr. Halloran stated there are excellent inspectors who are not good exam takers. He suggested identifying the individuals with CASp certifications as individuals who specialize in access. Building departments need a number of CASps, but not everyone needs to be CASp certified. He suggested that the state begin looking at division of duties. Building inspectors are required to know all types of construction. To add to that the 250 hours of study it takes to become CASp certified is overwhelming. Specialization is the key and accessibility needs to be recognized as a specialization.

Commissioner Dolim agreed that it takes a degree of specialization to benefit from the knowledge of the distinctions between the various codes as they pertain to accessibility and to acquire that knowledge. What began as a small part of Commissioner Dolim's business quickly grew as he gained understanding of the layers of the regulations and he began to be asked to take on a specialized approach. Today, being a CASp is a predominant part of his business.

Commissioner Navarro stated it is not about the complexity and mastering it all; it is a matter of knowing how and what tools to resort to in order to simplify and make accommodations in the built environment for the disabled community. Mr. Halloran agreed that there is an ongoing responsibility to provide disability access and every building inspector should know how to do that.

11. YEAR-TO-DATE BUDGET – UPDATE

a. FI\$CAL

Executive Director Jemmott stated a staff member is learning the new state FI\$CAL program that is projected to take until 2018 to become a smooth process.

b. Financial Narrative Report

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Executive Director Jemmott stated the 2015-2016 budget is \$526,000: \$365,000 for personnel services and \$161,000 for overhead. The system requires staff to encumber expected expenses. She stated the state controller informed her that there were not enough funds to cover a portion of a contract in the amount of \$38,000 and required the CCDA to pay it this year, which will put the CCDA over budget. The remaining budget projected at the end of the fiscal year (FY), June 30, is \$7,000.

Chair Leemhuis asked what the \$38,000 was for. Executive Director Jemmott stated it was for the strategic plan contractor. The funds were encumbered and staff was told it was paid from the previous year. There was an agreement with the accounting department to pay for a portion of the final payment in one FY, but by the next FY, the controller said the payment could not be split between FYs.

Commissioner Dolim stated, since the \$38,000 bill was not taken out of the 2014 year, a savings should have been incurred. He asked if the \$38,000 savings was ever realized.

Executive Director Jemmott stated the CCDA did not have the full \$38,000 at the end of the 2014 FY. Staff tried to pay \$28,000 in the 2014 FY and the remaining \$10,000 the following FY. The funds were encumbered but, once the FY passed and the state controller disallowed the split, they cannot be accessed even though those funds were set aside for the CCDA.

Chair Leemhuis stated the \$38,000 debt would have been reduced by \$28,000, the amount of the encumbered funds, but was not honored. Executive Director Jemmott stated that is currently being negotiated.

Chair Leemhuis asked staff to continue to negotiate this issue. The CCDA needs the \$28,000 back that was lost in the 2014 FY.

12. COMMUNITY UPDATES/COMMENTS FROM COMMISSION MEMBERS

Chair Leemhuis stated Commissioner Navarro was honored with the Community Service Award today by the 44th Anniversary Awards and Benefit Dinner for the Serve to Involve Filipino Americans group. He congratulated Commissioner Navarro on behalf of the Commission.

13. FUTURE AGENDA ITEMS

Chair Leemhuis stated the Executive Committee will further discuss the strategic plan and the budget in their next meeting. Chair Leemhuis will contact Commissioners for fund-raising help and ideas. He asked staff to prepare the goals and budget for special meetings such as the Riverside town hall meeting in an effort to ask members of the private sector to help underwrite the upcoming special meetings.

Chair Leemhuis asked Commissioners to send future agenda items to staff.

14. ADJOURN

Chair Leemhuis adjourned the meeting at 3:50 p.m.