

## **FINAL MINUTES**

Board of Agriculture and Consumer Services  
Virginia State Capitol  
Senate Room 3  
Richmond, Virginia  
December 11, 2014

The meeting of the Board of Agriculture and Consumer Services (Board) convened at approximately 9 a.m. on Thursday, December 11, 2014, in the Virginia State Capitol in Richmond, Virginia. President Sturgis called the meeting to order. At the President's request, Mr. Mills gave the invocation.

The Board Secretary called the roll:

### **PRESENT**

Stephen Ellis  
Steve Sturgis  
Shelley Barlow  
William B. Bain  
Robert J. Mills, Jr.  
Rosalea R. Potter  
L. Wayne Kirby  
Kay Johnson Smith  
Dr. Mark A. McCann  
John R. Marker  
L. Kirk Wiles, III  
Kevin J. Kordek  
Elizabeth L. White  
Dr. Jewel Hairston

### **DISTRICT**

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Pesticides – Commercial Structural  
Pesticides – Commercial Agricultural  
Representing Dr. Keith T. Miller, President, Virginia  
State University  
Representing Dr. Timothy D. Sands, President,  
Virginia Tech

Lonnie Johnson

### **STAFF PRESENT**

Sandra J. Adams, Commissioner  
Kevin E. Schmidt, Board Secretary

### **APPROVAL OF MINUTES**

Mr. Mills moved that the draft minutes of the meeting on July 28, 2014, be approved as distributed. Ms. Potter seconded the motion, and it was passed by a unanimous vote.

### **REPORT FROM BOARD MEMBERS**

#### **Lonnie Johnson**

Mr. Johnson reported that he attended and exhibited at the Virginia Farm Bureau Federation annual convention with Dr. Bobby Grisso. While there, he attended the address of new Virginia Tech President Dr. Timothy Sands. He announced that the Virginia Cooperative Extension (VCE) recently launched a website redesign that will result in a more user friendly interface. The recent reduction of VCE districts from six to four districts has created a great deal of strain on the remaining district directors, and VCE has been asking for input from the directors and

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looking at new management strategies. He shared that Virginia Tech is looking for ways to integrate education regarding the federal Supplemental Nutrition Assistance Program into cooperative extension programs and hopes to bring on new agents who will focus on family, consumer science, and nutrition education. At the present time, there are approximately 240 extension agents across the state. Mr. Johnson also reported that Dr. Grisso and Dr. Dini Miller are providing specialized bed bug training to agricultural agents in the most populated areas of the state to address this ongoing issue.

### **Robert Mills**

Mr. Mills reported an unusual growing season in Southside Virginia due to water shortages at the beginning of the season and heavy rains toward the conclusion. This has resulted in a marginal tobacco crop of inferior quality that has slightly depressed the market. He shared that growers were concerned about potential tobacco contracts for the coming year since some companies are cutting back, while others are scaling up. He stated that small grains got off to a slow start, but have recently improved. He indicated that cattle producers are faring extremely well due to several factors. Cattle are still grazing, which is unusual in Southside at this time of year, and feed stocks are good and will last through the winter. He stated that cattle prices continue to be excellent throughout the industry, which will continue as long as consumers continue to purchase beef despite the rising prices.

### **Stephen Ellis**

Mr. Ellis reported that summer crops were disappointing in his district as expected due to the absence of rain from July 4, 2014, until recent weeks. Crops were average throughout the district, falling in line or a little below state averages, as opposed to a normal year where they are slightly above state averages. He reported that farmers are concerned that the price structure for grain crops is based on the assumption of higher income levels for those crops and there has been an estimated 40 percent drop in grain prices. He expects that margins will be tight, but the businessmen will figure it out. Meanwhile, he is hoping for bountiful crops, which will help mitigate the issue.

### **Dr. Mark A. McCann**

Dr. McCann reported that the mid-summer was dry in his district, but 10 inches of rain fell over a two-week period in August, which began a period of sustained moisture. Forage stockpiles are large and most cattle producers are still grazing. Cattle prices are at a historic level, with weaned calves averaging around \$1,500 each and prices across the industry continuing to be firm. He stated that cattlemen and the industries that do business with them, including feed and seed stock, are all doing well. Dr. McCann shared that Christmas tree production, a significant industry in his district, has been strong, with a good year on both the retail and wholesale level. Christmas tree producers are looking forward to finishing out a good season this year.

### **John R. Marker**

Mr. Marker reported that the apple harvest went well and produced normal yields. His district had a dry August and September, which hurt some of the late pasturing of cattle and resulted in some hay and silage feeding. The rain returned in the middle of October. He mentioned that the corn harvest is 90 percent complete and that the soybean harvest is also mostly complete. The corn crop seems to be turning out well, although the prices could be better. He stated that some of the beans were small, but that the early planted bean season did well. He agreed with Dr. McCann that livestock farmers are doing well this year.

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### **Kay Johnson Smith**

At her first meeting as a Board member, Ms. Smith introduced herself to her fellow Board members. She shared that she is originally from Altavista, but has lived in Arlington the past 20 years, where she is President of the Animal Agriculture Alliance. The Alliance monitors issues relative to food production and agriculture across the nation, focusing on consumer opinion on food and trying to dispel misinformation on agriculture, farming, and production. In particular, the Alliance focuses on livestock and poultry issues. She reported that although there are no commercial farms in her district, the district does have many consumers who are interested in where their food originates and how it is produced. Some of the issues in her region involve backyard poultry flocks, farmers' markets, and community gardens.

### **Rosalea Potter**

Ms. Potter reported that the success of the growing season in her district depended on the rain each area received. The Lexington and Rockbridge areas received plenty of rain throughout the summer, resulting in a good harvest. Corn averaged between 160 to 200 bushels per acre and beans averaged between 35 to 40 bushels per acre in these areas. Augusta County and Southern Rockingham received less rain, resulting in growers reporting corn yields of only 39 bushels per acre and necessitating the early hay feeding of livestock. She shared that red meat prices continued to be high, and although she reported at the May meeting that she was seeing a shift in consumer demand to lower priced cuts of meat, as the holidays approach, consumers are purchasing more expensive cuts such as prime rib and tenderloin in similar amounts to previous years. She stated that there is also major growth in poultry operations in the Valley. Companies in the Valley are looking for new growers and are targeting younger growers. Agricultural lenders are willing to finance these younger producers because minimal land is required to put up a turkey house and these producers are able to generate cash flow. She reported that at least three new producers have already broken ground to put up turkey houses for Cargill and George's.

### **Kevin J. Kordek**

Mr. Kordek reported that, although there have not been any major changes in the pest control industry since the last meeting, it has proven to be a lackluster year for the industry. There were fewer jobs and opportunities for employment this year. Growth is about 2 percent this year in Virginia and about 0.5 percent nationwide. He shared that the Virginia Pest Management Association has been working with the Environmental Protection Agency (EPA) pesticide environmental stewardship program, which is the EPA's energy star equivalent for pesticide applicators, on modeling a national program after a 2001 and 2003 Virginia program. He stated that this will put Virginia in the spotlight in a positive way. Mr. Kordek shared that George Rambo, a trainer for 30 years and a longtime industry supporter, recently retired and will be dearly missed. He also mentioned that a new crawl space encapsulation task force will be convening in January. He will report on this task force at the next meeting.

### **Elizabeth L. White**

Ms. White reported that, as of November 25, 2014, the Office of Pesticide Services (OPS) has certified 22,924 applicators, which includes 7,995 commercial licenses, 6,853 private applicators and 8,076 registered technicians. There are 2,964 licensed pesticide businesses and 15,211 pesticide products registered for sale in Virginia. She stated that for the period of July 1, 2014-November 25, 2014, OPS conducted 748 inspections and 51 investigations and responded to six citizen assistance requests. OPS also reviewed and approved 95 pesticide safety

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recertification education programs and conducted 14 outreach and education events. She added that OPS also monitored four pesticide safety recertification courses.

### **L. Kirk Wiles, III**

Mr. Wiles reported that the annual grape harvest is complete and that yields were slightly better than expected. Growers conservatively estimated grape yields in response to weather concerns surrounding an early March frost so there is actually excess Virginia-grown fruit available for purchase by Virginia wineries. He stated that the overall quality of the fruit was above average. The flavor of the fruit is excellent, although an early cold spell resulted in the sugars in the fruit only ripening to certain point, which will yield lower-alcohol wine. He announced that his winery, Paradise Springs, recently opened a lab where other wineries can send samples to be tested locally, which he believes will engage winemakers in Northern Virginia. He discussed the annual Governor's Cup competition, which is currently gearing up to accept submissions, with results to be announced in February.

### **Shelley Barlow**

Ms. Barlow reported that the harvest is almost complete in her district. The corn harvest is complete and was excellent and the cotton crop is 99 percent complete. She stated that the 2014 crop surpassed the record breaking 2013 crop. Despite the low prices, it has been a record breaking cotton crop. This has resulted in much of the cotton not being ginned yet due to volume and labor issues. The peanut crop also benefited from an excellent growing season. Wet weather over the past three weeks has resulted in some harvest delays for both peanuts and soybeans. The soybean crop was also good this year. Ms. Barlow shared that she represented her area at the Virginia Farm Bureau Federation annual convention as a delegate and was gratified by the Governor's and the Secretary of Agriculture and Forestry's support of the Virginia agriculture industry. She is also participating in the Virginia Agriculture Leaders Obtaining Results (VALOR) program, which recently visited southeast Virginia. She stated that she is excited to be part of the VALOR program and hopes that the experience will further enhance her experience on the Board.

### **William B. Bain**

Mr. Bain thanked Dr. McCann and the Virginia Tech staff for hosting the Board's summer meeting and tour in Blacksburg. As he reported at the summer meeting, the corn crop was poor in his district. Commodity prices are off by 30 to 40 percent, which has only been offset by the good yields. He mentioned that producers cannot afford to grow corn at this point, whereas in past years end users of corn complained that they could not afford to purchase it. He hopes that a happy medium will be reached soon. He anticipates that there will be record yields in the state for both cotton and peanuts and that there is also a possibility of record yields for soybeans. Most soybeans have already been harvested in his immediate area, but harvesting continues east of Interstate 95. Mr. Bain mentioned that although it is not the Board's immediate area, he has been hearing from hunters that the deer population is dying from a disease communicated by insect bites. Game wardens do not feel that the incidence of dead and diseased deer is any higher than usual, but Mr. Bain is hearing differently from the hunters in his region. He also stated that he would like to add an item to the agenda under new business to discuss the effect of the Indirect Cost Recovery funds that were collected from the commodity boards. He understood that the Governor is trying to balance the budget, but stated his concern that the funds need to be guarded because of their importance to the commodity boards.

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### **L. Wayne Kirby**

Mr. Kirby reported that harvest in his district is 99.9 percent complete. Corn yields were down, but soybean yields were up due to timely rains. He shared that there was a significant amount of grain sorghum planted in his area this year and that growers were pleased with the yields and sales. As a result, he expects to see more grain sorghum grown in the coming year. Small grains were planted in a timely manner and are off to a very good start going into the winter. He stated that industrial biosolids are a growing issue in his region and that Delegate Peace will be introducing related legislation this session.

### **Dr. Jewel Hairston**

Dr. Hairston announced that Virginia State University (VSU) President Keith T. Miller will be resigning, effective December 31, 2014, and that Dr. Pamela Hammond will begin serving as Interim President on January 1, 2015. Dr. Hammond previously served as provost at Hampton University and is the first female to serve as VSU President. Dr. Hairston stated that Dr. Miller was a strong supporter of VSU's School of Agriculture and the Virginia agriculture industry as a whole and she is optimistic that Dr. Hammond will be as well. She intends to request a meeting with Dr. Hammond to discuss the industry and VSU's agriculture program. Dr. Hairston also discussed a recent hops growing demonstration at the university that generated interest from growers, microbrewery owners, and VSU staff. She announced the addition of two new extension specialists; Dr. Gafingi, previously of Tuskegee University, will focus on alternative and urban agriculture and Dr. Franks, previously of North Dakota State University, will begin on January 20, 2015 and will focus on predatory wildlife management.

### **Steve Sturgis**

Mr. Sturgis reported that his district had a similar growing season to those reported on by the other districts. Sorghum was a new crop grown in his area this year that he expects to see more of in the future since it did well. The corn crop was good for those who planted corn. The soybean crop was so good this year that all the granaries were full, which created bottlenecks and shut down harvesting for a few days. He shared the difficulty in getting rail cars to transport the grain off of the Eastern Shore. He explained that his granary advised that most available rail cars are in the Midwest hauling fracking sand, which is significantly more profitable for the rail companies than hauling grain. He said that his district's proximity to the ports allow them to easily load grain into containers to be shipped overseas. The wheat crop has been planted, and Mr. Sturgis estimates that 40 percent less wheat is being grown this year in his area because of the low prices. He said the price of wheat has been inching up a slightly, but unless there is a major event elsewhere in the world, the prices are unlikely to rebound significantly. He stated that his district looks forward to a good growing winter.

### **COMMISSIONER'S REPORT**

Commissioner Adams delivered her report to the Board. During the presentation of this report, she briefed the Board on personnel changes, recent and future events, and other matters relating to VDACS. A copy of the written report, on which her presentation was based, was included in the Board meeting folder.

### **MEETING RECESS FOR PUBLIC HEARING**

At approximately 9:50 a.m., President Sturgis called for a recess to allow the Board and staff to prepare for a public hearing on the proposed regulations for 2 VAC 5-585, Retail Food Establishment Regulations.

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### **SUMMARY OF PUBLIC HEARING FOR 2 VAC 5-585 (RETAIL FOOD ESTABLISHMENT REGULATIONS)**

At 10:05 a.m., President Sturgis opened the public hearing on the proposed regulations for 2 VAC 5-585, Retail Food Establishment Regulations. A court reporter was present to make a record of the hearing, which will be included with the final minutes of the meeting.

President Sturgis called on Dr. Richard Wilkes, State Veterinarian and Director, Division of Animal and Food Industry Services. Dr. Wilkes called on Ryan Davis, Program Manager, Office of Dairy and Foods, who briefed the Board concerning the proposed regulations for 2 VAC 5-585 (Retail Food Establishment Regulations).

Following Mr. Davis's presentation, President Sturgis asked if there was anyone in the audience who wished to speak. President Sturgis also asked the Board Secretary if anyone signed up to speak. No one wished to speak nor signed up to speak.

President Sturgis advised the Board that following the end of the public comment period for the proposal, staff will review oral and written comments received and, at a later meeting, present a recommendation on the proposal. President Sturgis then adjourned the public hearing at 10:10 a.m. and returned the Board to its regular business meeting.

### **PROPOSED FAST TRACK ACTION – 2 VAC 5-30 (RULES AND REGULATIONS PERTAINING TO REPORTING REQUIREMENTS FOR CONTAGIOUS AND INFECTIOUS DISEASES OF LIVESTOCK AND POULTRY IN VIRGINIA)**

President Sturgis called on Dr. Wilkes, State Veterinarian and Director, Division of Animal and Food Industry Services, who introduced Dr. Charles Broaddus, Program Manager, Office of Veterinary Services. Dr. Broaddus briefed the Board on the proposed fast-track action to amend 2 VAC 5-30 (Rules and Regulations Pertaining to Reporting Requirements for Contagious and Infectious Diseases of Livestock and Poultry in Virginia).

Following Dr. Broaddus's presentation and an opportunity for Board questions and comments, Mr. Bain moved that the Board adopt 2 VAC 5-30, Rules and Regulations Pertaining to Reporting Requirements for Contagious and Infectious Diseases of Livestock and Poultry in Virginia, as presented by staff, and that the Board authorize staff to take any and all steps necessary to have this regulation become final through a fast-track regulatory action. Mr. Mills seconded the motion and it was carried by a unanimous vote of the Board.

### **PROPOSED FAST TRACK ACTION – 2 VAC 5-531 (REGULATIONS GOVERNING MILK FOR MANUFACTURING PURPOSES)**

President Sturgis called again on Dr. Wilkes, who called on Ryan Davis, Program Manager, Office of Dairy and Foods. Mr. Davis briefed the Board on the proposed fast-track action to amend 2 VAC 5-531 (Regulations Governing Milk For Manufacturing Purposes).

Following Mr. Davis's presentation and an opportunity for Board questions and comments, Mr. Mills moved that the Board adopt 2 VAC 5-531, Regulations Governing Milk For Manufacturing Purposes, as presented by staff, and that the Board authorize staff to take any and all steps necessary to have this regulation become final through a fast-track regulatory action. Ms. Potter seconded the motion and it was carried by a unanimous vote of the Board.

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### **FINAL STAGE – 2 VAC 5-490 (REGULATIONS GOVERNING GRADE "A" MILK)**

President Sturgis called again on Ryan Davis, who briefed the Board on the final stage for 2 VAC 5-490 (Regulations Governing Grade "A" Milk).

Following Mr. Davis's presentation and an opportunity for Board questions and comments, Mr. Ellis moved that the Board adopt 2 VAC 5-490, Regulations Governing Grade "A" Milk, as presented by staff, and that the Board authorize staff to take any and all steps necessary for this exempt regulation to become a final regulation of the Board. Mr. Bain seconded the motion and it was carried by a unanimous vote of the Board.

### **PROPOSED STAGE – 2 VAC 5-111 (RULES AND REGULATIONS PERTAINING TO PUBLIC AND PRIVATE ANIMAL SHELTERS) AND THE PROPOSED REPEAL OF 2 VAC 5-110 (RULES AND REGULATIONS PERTAINING TO A POUND OR ENCLOSURE TO BE MAINTAINED BY EACH COUNTY OR CITY)**

President Sturgis called again on Dr. Wilkes, who introduced Dr.Carolynn Bissett, Acting Program Manager, Office of Animal Care and Emergency Response. Dr. Bissett briefed the Board on the proposed action for 2 VAC 5-111 (Rules and Regulations Pertaining to Public and Private Animal Shelters), which includes the proposed repeal of 2 VAC 5-110 (Rules and Regulations Pertaining to a Pound or Enclosure to be Maintained By Each County or City).

Following Dr. Bissett's presentation and an opportunity for Board questions and comments, Mr. Mills moved that the Board adopt 2 VAC 5-111, Rules and Regulations Pertaining to Public and Private Animal Shelters, which includes the proposed repeal of 2 VAC 5-110, Rules and Regulations Pertaining to a Pound or Enclosure to be Maintained By Each County or City; and that the Board authorize staff to take any and all steps necessary to file the proposed regulation for public comment. Ms. Barlow seconded the motion and it was carried by a unanimous vote of the Board.

### **FINAL STAGE – 2 VAC 5-610 (RULES GOVERNING THE SOLICITATION OF CONTRIBUTIONS)**

President Sturgis called on Andy Alvarez, Director, Division of Consumer Protection. Mr. Alvarez called on Ms. Laura Hare, Policy Analyst. Ms. Hare briefed the Board on the final stage for 2 VAC 5-610 (Rules Governing the Solicitation of Contributions).

Following Ms. Hare's presentation and an opportunity for Board questions and comments, Mr. Mills moved that the Board adopt 2 VAC 5-610, Rules Governing the Solicitation of Contributions, as presented by staff, and that the Board authorize staff to take any and all steps necessary for this proposed regulation to become a final regulation of the Board. Dr. McCann seconded the motion and it was carried by a unanimous vote of the Board.

Ms. Smith signed and filed a disclosure statement of financial impact form after the vote. The signed form stated that Ms. Smith is a member of a business, profession, occupation, or group affected by the transaction and stated the nature of her personal interest. The form also declared that she was nevertheless able to vote fairly, objectively, and in the public interest. The form was signed, dated, and filed with the Commissioner of Agriculture and Consumer Services, who will retain and make this declaration available for a period of five years from the date of recording or receipt as required per § 2.2-3114 of the Code of Virginia.

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### **OFFICE OF PESTICIDE SERVICES – CASE DECISION – CASES 52044 AND 52050**

President Sturgis advised that both VDACS and the representative for Hart Farms (Mr. Shuler T. Hart) would have up to 15 minutes each to present their position regarding these cases. President Sturgis explained that the presentations by Hart Farms and VDACS are not meant for providing new information about the cases.

President Sturgis called on Andy Alvarez, Director, Division of Consumer Protection, who briefed the Board on this case decision from the Office of Pesticide Services concerning Hart Farms. Mr. Alvarez explained that the Board's options were to accept, reject, or modify the hearing officer's recommendation. Mr. Alvarez mentioned that he has been in contact with Mr. Hart and that Mr. Hart was aware of the recommendation that Mr. Alvarez was going to make and therefore did not see it fit to attend. Mr. Alvarez asked that the hearing officer's recommendation to dismiss the case and refund the charges be accepted by the Board.

Prior to the vote of the Board, Mr. Bain signed and filed a disclosure statement of financial impact form. The signed form stated that Mr. Bain is a member of a business, profession, occupation, or group affected by the transaction and stated the nature of his personal interest. The form also declared that he was nevertheless able to vote fairly, objectively, and in the public interest. The form was signed, dated, and filed with the Commissioner of Agriculture and Consumer Services, who will retain and make this declaration available for a period of five years from the date of recording or receipt as required per § 2.2-3114 of the Code of Virginia.

Following the presentation by Mr. Alvarez and an opportunity for Board questions and comments, Mr. Kordeck moved that the Board adopt Mr. Alvarez's recommendation to dismiss the case and to reverse any fines and that the Board's dismissal of the case not be a reflection of the good work of Mr. Alvarez's staff. Mr. Mills seconded the motion and it was carried by a unanimous vote of the Board.

President Sturgis commented that this was a thorough investigation and complimented staff for its work. President Sturgis also advised that following the meeting, Mr. Hart will receive a letter concerning the Board's decision. President Sturgis also advised that Hart Farms has the right to appeal the Board's decision to the Richmond Circuit Court.

### **UPDATE ON PESTICIDE CONTROL FUND- ANDRES ALVAREZ, DIRECTOR, DIVISION OF CONSUMER PROTECTION**

President Sturgis called on Andy Alvarez, Director, Division of Consumer Protection, to deliver this presentation.

### **AGRO-TERRORISM PRESENTATION- DR. RICHARD WILKES, STATE VETERINARIAN AND DIRECTOR, DIVISION OF ANIMAL AND FOOD INDUSTRY SERVICES**

President Sturgis called on Dr. Wilkes, State Veterinarian and Director, Division of Animal and Food Industry Services, to deliver this presentation.

### **NEW BUSINESS**

Mr. Bain and Ms. Barlow mentioned their concerns regarding the funding moved from the various commodity organizations to cover the indirect cost assessment as required in the fiscal year 2014 and fiscal year 2015 Appropriations Act.



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Mr. Mills mentioned a recent phone call from a constituent in Halifax County regarding House Bill 1290 (home food operations; certain exemptions for products - Delegate Robert B. Bell, 2015 Session of the General Assembly).

Mr. Bain asked that the Board recognize Virginia State University President Dr. Keith Miller and send a letter thanking him for his time on the Board. (The Board Secretary will send a letter on behalf of the Board.)

### **FUTURE BOARD MEETINGS**

President Sturgis announced that the dates for meetings of the Board in 2015 are set for March 19, May 21, and December 10. All three meetings will be held in the Virginia State Capitol in Richmond. President Sturgis also mentioned that the Board would set the summer meeting/tour dates and location when it meets in March 2015.

### **PUBLIC COMMENT PERIOD**

Brad Copenhaver spoke on behalf of the Virginia Agribusiness Council. He mentioned that the Council just discussed the indirect cost assessment issue and will continue to watch when the Governor releases his budget amendments. He also mentioned that the Council voted to support the DriftWatch program that Commissioner Adams mentioned during her report.

President Sturgis reminded the Board that members need to submit their Financial Disclosure forms by December 15, 2014. President Sturgis also mentioned that the Eastern Shore will host its annual agriculture conference at the Eastern Shore Community College on February 10-11, 2015.

There being no further business, the Board adjourned at approximately 11:41 a.m.

Respectfully submitted,

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Steve Sturgis  
Board President

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Kevin Schmidt  
Board Secretary